

A6028BE
HEARING MARCH 15, 2012

1 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

2 PANEL HEARING

3 SAN LUIS OBISPO, CALIFORNIA

4 MARCH 15, 2012

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8 CONTINUATION OF THE

9 HEARING ON THE WAIVER OF WASTE DISCHARGE

10 REQUIREMENTS DISCHARGED FROM

11 IRRIGATED LANDS

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24 REPORTED BY: DEBORAH L. HOLDEN, CSR NO. 8885

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<p>1 how it is done in regions five, regions four, and regions 2 six. This is a form, a standard, a process that the State 3 Water Board approved in its 2004 Order when it reviewed 4 the Conditional Waiver for the Central Valley. And it is 5 a format and a process that is allowed under the Water 6 Code.</p> <p>7 So we hope that as you work on all this today, 8 you take all of that into consideration with respect to 9 the reporting, its group format, and that it does meet the 10 legal standards within the Water Code.</p> <p>11 Now, policy decision. If the Board decides that 12 it wants something more different, to me that is a 13 different question with respect to whether does it meet 14 the legal standard.</p> <p>15 That's the main points we wanted to leave with 16 you as you start your deliberations today. And if there 17 are any questions, of course.</p> <p>18 MR. YOUNG: Any Board questions?</p> <p>19 MS. HUNTER: No.</p> <p>20 MR. YOUNG: Thank you. One thing I'd like to 21 just alert you to, I know you lodged some objections 22 yesterday --</p> <p>23 MS. DUNHAM: Yes.</p> <p>24 MR. YOUNG: -- at the beginning of our session. 25 I just wanted to remind you to take the opportunity right</p> <p style="text-align: right;">Page 6</p>	<p>1 haven't read the report.</p> <p>2 MS. DUNHAM: Neither have I, Chairman Young, so I 3 can appreciate that.</p> <p>4 MR. YOUNG: There's nothing that we -- we haven't 5 considered it because it's not part of the evidence on 6 this matter.</p> <p>7 MS. DUNHAM: Understood.</p> <p>8 MR. YOUNG: Yeah. Okay. Thank you.</p> <p>9 MS. DUNHAM: Thank you.</p> <p>10 MR. YOUNG: All right. Mr. Briggs.</p> <p>11 MR. BRIGGS: So the Order of events, if I've got 12 it right, is that the Staff will have an opportunity to 13 provide their response to comments yesterday, as well as 14 the summary and then back to me for final recommendation.</p> <p>15 MR. YOUNG: Okay. Can everybody speak up loudly 16 and clearly.</p> <p>17 MS. McCANN: Good afternoon. Again, I'm Lisa 18 McCann, M-c-C-a-n-n, environmental program manager. I 19 brought my suitcase today in case you make me sleep over 20 again. Just kidding.</p> <p>21 Last night, we successfully, and you patiently 22 got through all the public comment. And you also gave us 23 a homework assignment. And we took that seriously.</p> <p>24 And, Mr. Johnston, you specifically asked, What 25 is the most effective Order that you, the Board, can pass</p> <p style="text-align: right;">Page 8</p>
<p>1 now during your rebuttal period if there's anything that 2 you heard that you had objected to that this would be an 3 opportunity for you to rebut what you heard.</p> <p>4 MS. DUNHAM: The only thing I would add is, 5 there's been a lot of obvious reference and a lot of press 6 media to the recent U.C. Davis report that's come out. 7 And I think it's important for everybody to understand 8 that that report was released on Tuesday. It is over 1300 9 pages. And it's going to take time for everybody to 10 review and comprehend the extent of what that report says 11 and what it means.</p> <p>12 As with any report, we're all going to pick and 13 choose elements out of it that we like and those that we 14 don't like as it is with any scientific or technical 15 report.</p> <p>16 I think it may have been mentioned earlier today 17 that the State Water Board is holding a workshop with 18 respect to that report on May 23rd. And from there, we'll 19 be looking to give guidance to the regional Boards, as 20 well. So I think we all need to sit back, take some time, 21 review it ourselves, understand it ourselves, and make our 22 own determinations and conclusions with respect to the 23 information and then participate in the State Board's 24 Hearing.</p> <p>25 MR. YOUNG: I'm sure you can appreciate that we</p> <p style="text-align: right;">Page 7</p>	<p>1 to improve water quality which meets legal standards. And 2 you also asked what legal and policy issues need to be 3 resolved to make the proposed edits and alternative from 4 Farmers For Water Quality work.</p> <p>5 We reviewed the proposed edits from Farmers For 6 Water Quality and the additional issues that were raised 7 yesterday during comments and during your various 8 questions, and we've prepared responses that we will 9 present to you in -- next slide -- in this Order. This is 10 generally what we're going to address. So it would be the 11 responses to the edits as proposed from Farmers For Water 12 Quality, some other suggested edits in response to 13 comments, and then just, if we have time, interest and 14 response to some of the other issues that were discussed, 15 and then as Roger mentioned, make a recommendation.</p> <p>16 I do want to assure you that our responses 17 represent the best way to advance water quality 18 improvements so that aquatic habitat becomes healthier and 19 drinking water becomes safe for the communities on the 20 central coast.</p> <p>21 MS. SCHROETER: I think the easiest way to go 22 through is to actually go through the presentation 23 provided by Ms. Dunham yesterday and talk a little bit 24 about what our response is to the information.</p> <p>25 In some cases, it's -- a legal response is going</p> <p style="text-align: right;">Page 9</p>

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<p>1 to be required, so I'll defer to Frances for those.</p> <p>2 We didn't have the opportunity to prepare a</p> <p>3 handout to go with these slides. So what I'm going to do</p> <p>4 I'm going to put it in the format where there's notes on</p> <p>5 the bottom of this presentation. And you can just read</p> <p>6 off the notes as we entered them last night and this</p> <p>7 morning.</p> <p>8 Can you read where it says -- no, no, no, no.</p> <p>9 Let's just do it the other way, slide view.</p> <p>10 (Discussion held off the record.)</p> <p>11 MS. McCANN: I just want to clarify what we're</p> <p>12 trying to show you here. We put the notes in some of the</p> <p>13 responses to the edits that were proposed in the notes</p> <p>14 area in the PowerPoint, so we don't want to use the slide</p> <p>15 view because then we won't be able to show you the notes.</p> <p>16 MR. BRIGGS: It's going to be down here.</p> <p>17 MS. McCANN: So it's going to be a little bit</p> <p>18 less than the full view of the slides. But hopefully</p> <p>19 you'll be able to follow along and see exactly what we're</p> <p>20 trying to help you see.</p> <p>21 MS. SCHROETER: What I suggest you do is to use</p> <p>22 your handout yesterday that Ms. Dunham provided to you to</p> <p>23 go ahead and do your markups.</p> <p>24 In general, our review focused on all of these</p> <p>25 items in the presentation but especially in areas where</p> <p style="text-align: right;">Page 10</p>	<p>1 apply this tier criteria.</p> <p>2 I'm just going to jump down to Tier 3. I think</p> <p>3 that's where there is a lot of concern about whether or</p> <p>4 not this really is an indicator of risk. So Tier 3 is</p> <p>5 those farms that use chlorpyrifos or diazinon and</p> <p>6 discharge to an impaired surface water, impaired</p> <p>7 specifically for toxicity and pesticides.</p> <p>8 So in our Staffs' opinion and judgment, there is</p> <p>9 no other better indicator for threat to water quality.</p> <p>10 The use of chemicals known to cause toxicity, specifically</p> <p>11 diazinon and chlorpyrifos, and the actual discharge to a</p> <p>12 water body that's already impaired for pesticides and</p> <p>13 toxicity. Simply that.</p> <p>14 The second one is nitrogen loading crop type and</p> <p>15 an acreage grid of 500 acres. It's important to look at</p> <p>16 how the tiers relate to each other. Remember, again, this</p> <p>17 is relative threat. In this case, the acreage for Tier 3</p> <p>18 is 500 acres and the acreage for Tier 1 is 50 acres.</p> <p>19 All things held the same, for example, a lettuce</p> <p>20 crop, the potential risk or threat to water quality for a</p> <p>21 500-acre farm is much, much different than a 50-acre farm.</p> <p>22 We'll show you also in a moment when we get to</p> <p>23 other issues how we build the conditions from Tier 1,</p> <p>24 Tier 2, and Tier 3 based upon that risk. So it's not that</p> <p>25 the Tier 1 farms don't have any conditions, for example,</p> <p style="text-align: right;">Page 12</p>
<p>1 there were suggested changes. And we'll go through</p> <p>2 specifically how we responded to the specific changes or</p> <p>3 not, and provide you with our justification.</p> <p>4 This first one is a statement here that growers</p> <p>5 are treated differently, however the treatment is not</p> <p>6 necessarily based upon the threat to water quality but</p> <p>7 size of operation. What I wanted to remind you -- if I</p> <p>8 can pull up -- let's see if I can pull up my</p> <p>9 presentation -- but with a tiering, the criteria for each</p> <p>10 of the tiers.</p> <p>11 In response to comments both in November, as well</p> <p>12 as in March 2011, we proposed tiers that were based upon</p> <p>13 threat to water quality. Tier 1, which is the lowest</p> <p>14 threat. Tier 2, the water threat. Tier 3 is the higher</p> <p>15 threat.</p> <p>16 We did evaluate all sources of information in</p> <p>17 terms of what was causing the impairments in the region</p> <p>18 for toxicity as well as for groundwater. And we knew that</p> <p>19 the major drivers for both those items were pesticide use</p> <p>20 and specific pesticides were causing much of the toxicity.</p> <p>21 We knew that fertilizer application, specifically</p> <p>22 excessive fertilizer application was causing the</p> <p>23 impairments to groundwater.</p> <p>24 What we tried to do in terms of taking a</p> <p>25 reasonable approach in advancing the current Order was to</p> <p style="text-align: right;">Page 11</p>	<p>1 related to nutrients, they just have lesser than those in</p> <p>2 Tier 3.</p> <p>3 MS. HUNTER: Angela, so what -- if I can just</p> <p>4 restate what you just said. You're saying it's the size</p> <p>5 of the operation, but also the type of pesticide they're</p> <p>6 using and the higher crop potential for nitrogen loading</p> <p>7 to the groundwater?</p> <p>8 MS. SCHROETER: Right.</p> <p>9 MS. HUNTER: So it's not one size fits all?</p> <p>10 MS. SCHROETER: It's not one size fits all. It's</p> <p>11 doesn't mean that no one in Tier 1 or Tier 2 have any</p> <p>12 risk. It's relative risk and the balancing of reasonable</p> <p>13 requirements relative to that risk.</p> <p>14 MS. HUNTER: Okay.</p> <p>15 MS. SCHROETER: The second one is requesting --</p> <p>16 or is talking about this Ag report in terms of the</p> <p>17 Executive Officer elevating into Tier 1 and Tier 2. And</p> <p>18 that you may require also looking at the specifics of</p> <p>19 operations in farms in terms of the tiering.</p> <p>20 In response to these, what we're suggesting here</p> <p>21 is to also address -- I can't remember the gentleman's</p> <p>22 name -- about the smaller farms. He talked about smaller</p> <p>23 farms and the 300 -- was it Sanchez? I can't remember his</p> <p>24 name.</p> <p>25 MR. YOUNG: Mr. Sanchez.</p> <p style="text-align: right;">Page 13</p>

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<p>1 MS. SCHROETER: Mr. Sanchez -- and whether or not</p> <p>2 we -- how we were going to deal with those smaller farms.</p> <p>3 And one of the suggestions that we are suggesting in the</p> <p>4 Order -- I don't know if it's an appropriate time to pass</p> <p>5 out these -- is to look at those specific farms that have</p> <p>6 a specific disadvantage. So USDA actually has a</p> <p>7 definition for limited resource farmers and to prioritize</p> <p>8 compliance assistance for those types of farms.</p> <p>9 In the interest of time, do you think I should</p> <p>10 just --</p> <p>11 I'm wondering if I should just jump to those that</p> <p>12 speak to specific edits.</p> <p>13 MR. THOMAS: Yes.</p> <p>14 (Discussion held off the record.)</p> <p>15 MS. HUNTER: Are you done, then, with that</p> <p>16 particular issue of the E.O. having the ability to elevate</p> <p>17 to a higher tier an individual operation?</p> <p>18 MR. YOUNG: Monica, how about if I suggest this</p> <p>19 that maybe we all hold our questions, write them down, so</p> <p>20 we can have Staff tell us what they want to tell us, and</p> <p>21 then we'll launch in with our questions. That might just</p> <p>22 help get through this point.</p> <p>23 MS. HUNTER: Yes. You asked me that yesterday,</p> <p>24 and I forgot.</p> <p>25 MR. YOUNG: That's okay.</p> <p style="text-align: right;">Page 14</p>	<p>1 MR. YOUNG: Okay. Go ahead.</p> <p>2 MS. SCHROETER: The second one relates to</p> <p>3 Table 1A and Attachment 1B. And that, if you recall, is a</p> <p>4 table of Water Quality Standards. They're specifically</p> <p>5 culling out the narrative objective for biostimulation.</p> <p>6 The objection is is that -- we included language here at</p> <p>7 the bottom which is the water Board Staff estimates that</p> <p>8 one milligram per liter nitrate is necessary to protect</p> <p>9 aquatic life.</p> <p>10 We agree that that's not an adopted standard. We</p> <p>11 have a suggestion -- or we agree with the edit to delete</p> <p>12 that.</p> <p>13 MR. DELGADO: You're agreeing to delete Table 1A?</p> <p>14 MS. SCHROETER: No, no, no. Just this piece</p> <p>15 of -- just the sentence in 1A.</p> <p>16 What Michael is handing out is a supplemental</p> <p>17 sheet which actually summarizes all of the proposed edits.</p> <p>18 MS. McCHESNEY: Angela, do have copies for people</p> <p>19 in the audience, too?</p> <p>20 MS. SCHROETER: I'm not sure how much admin made,</p> <p>21 but I think there's a lot of extras there.</p> <p>22 MR. YOUNG: We need to make sure everybody who</p> <p>23 wants a copy gets a copy.</p> <p>24 MS. SCHROETER: You can make as many copies as</p> <p>25 you want.</p> <p style="text-align: right;">Page 16</p>
<p>1 MS. HUNTER: Thank you.</p> <p>2 MS. SCHROETER: What I'm doing now is going to</p> <p>3 their first slide of suggested edits.</p> <p>4 (Discussion held off the record.)</p> <p>5 MS. SCHROETER: Starting on Page 18, the Farmers</p> <p>6 For Water Quality start suggesting specific edits. For</p> <p>7 example, here their suggestion is related to</p> <p>8 Attachment 1B. Attachment 1B includes 140 findings. And</p> <p>9 the solution was not to adopt Attachment 1B.</p> <p>10 Attachment 1B basically is the attachment to the</p> <p>11 Order which includes all of the findings about the</p> <p>12 rationale for conditions in the Order. Staff included</p> <p>13 these to be transparent about the justification and</p> <p>14 rationale for those conditions. So we do not agree with</p> <p>15 the suggestion to not adopt or not include Attachment 1B.</p> <p>16 There's no page numbers. Sorry. It has the</p> <p>17 heading here Attachment 1B.</p> <p>18 Got it? Okay. So next page.</p> <p>19 MR. JEFFRIES: You're not going page by page?</p> <p>20 MS. SCHROETER: In the interest of time, since</p> <p>21 this presentation was 66 slides, I'm going straight to the</p> <p>22 ones where there was suggested modification to the Order</p> <p>23 MRP. And then we can go back if you want to discuss any</p> <p>24 of the other items.</p> <p>25 (Discussion held off the record.)</p> <p style="text-align: right;">Page 15</p>	<p>1 (Discussion held off the record.)</p> <p>2 MS. SCHROETER: We can go to the page. Let's do</p> <p>3 that.</p> <p>4 MS. HUNTER: I just want to clarify which</p> <p>5 sentence is being deleted in Table 1A.</p> <p>6 MS. McCHESNEY: It's on your yellow sheet right</p> <p>7 there, number one.</p> <p>8 MS. SCHROETER: So in front of you, you have a</p> <p>9 supplemental sheet. What it includes is all of the edits</p> <p>10 suggested by Staff in response to both the information</p> <p>11 presented by Farmers For Water Quality as well as some</p> <p>12 issues that were brought up by the Board members</p> <p>13 themselves yesterday.</p> <p>14 If I can just make a suggestion or give you some</p> <p>15 options for how to go through this. So we have the slides</p> <p>16 in front of us from Farmers For Water Quality, we have the</p> <p>17 edits here in the yellow sheet, and we also have the Order</p> <p>18 itself. So I can connect back to the Order. We can go to</p> <p>19 the page and we can look at that specific change.</p> <p>20 MR. JORDAN: On the yellow sheet, Angela, when</p> <p>21 you don't say Attachment A, does that mean we're back in</p> <p>22 the Order? Like the second item.</p> <p>23 MS. SCHROETER: Yes.</p> <p>24 MR. JORDAN: Okay.</p> <p>25 MR. YOUNG: Are you ready for the second change</p> <p style="text-align: right;">Page 17</p>

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<p>1 you're going to tell us about or --</p> <p>2 MR. THOMAS: Yes.</p> <p>3 MR. YOUNG: -- or proposed change that you</p> <p>4 addressed and have a response to?</p> <p>5 MS. SCHROETER: Yes.</p> <p>6 MR. YOUNG: Go ahead.</p> <p>7 (Discussion held off the record.)</p> <p>8 MS. SCHROETER: Just to clarify, our comments</p> <p>9 relate to specific changes as well as to the general</p> <p>10 concept described as Part E. And Part E is very large. I</p> <p>11 think it's going to be an involved discussion. So I'm</p> <p>12 going to defer the Part E discussions until the very last.</p> <p>13 Is that okay?</p> <p>14 (Discussion held off the record.)</p> <p>15 MR. YOUNG: Okay. Let's continue.</p> <p>16 MR. THOMAS: I have a suggestion, Mr. Chairman,</p> <p>17 that -- we have 66 pages that were submitted in the form</p> <p>18 of slides with recommended changes. Some of those are</p> <p>19 edits, some are policy things, some are rebuttal. What</p> <p>20 I'm proposing is that instead of the Board trying to</p> <p>21 follow along in the Order or in the attachments or even in</p> <p>22 this sheet that we just handed out, that we just stick to</p> <p>23 the issue that's on the Board, the slide that's up here,</p> <p>24 where we are recommending an edit. We'll stop at each one</p> <p>25 where we are recommending an edit in response to the</p> <p style="text-align: right;">Page 18</p>	<p>1 MS. McCHESNEY: I apologize if I sound like the</p> <p>2 public doesn't need to understand. It's important that</p> <p>3 you understand and not to get distracted by lots of</p> <p>4 different things. But just make sure the Board</p> <p>5 understands the Staffs' responses.</p> <p>6 MR. THOMAS: I think that these are</p> <p>7 self-explanatory when we look at them. The Order</p> <p>8 requires -- currently requires as this states -- I'm going</p> <p>9 right to the part where it has red text. Organic</p> <p>10 materials, such as organic pesticides, and we're going</p> <p>11 to -- we agree that we should cross that out. And</p> <p>12 registered pesticides that may. We agree to add that</p> <p>13 language with the exception of taking out the word</p> <p>14 registered so that it's just pesticides. We're agreeing</p> <p>15 with most of that edit in that part of the Order.</p> <p>16 MR. DELGADO: I just want to note that on the</p> <p>17 yellow sheet, the word registered is not there. That's</p> <p>18 your point.</p> <p>19 MR. THOMAS: Yes.</p> <p>20 MR. DELGADO: That the yellow sheet is what you</p> <p>21 want to suggest to us?</p> <p>22 MR. THOMAS: Yes.</p> <p>23 MR. DELGADO: Okay.</p> <p>24 MR. THOMAS: Next slide?</p> <p>25 MR. YOUNG: Yes, next slide.</p> <p style="text-align: right;">Page 20</p>
<p>1 suggestion. We'll just focus on that to try and simplify</p> <p>2 this.</p> <p>3 MR. YOUNG: I thought that's what we were trying</p> <p>4 to do.</p> <p>5 MR. THOMAS: I think what happened is, when we</p> <p>6 passed out the yellow sheet -- and I can see the Board</p> <p>7 members trying to follow along with the yellow sheet and</p> <p>8 with the Order itself trying to match things up. I think</p> <p>9 it's too complex.</p> <p>10 MR. YOUNG: Okay. So we'll stick to what's on</p> <p>11 the screen. Right?</p> <p>12 MR. THOMAS: Yes.</p> <p>13 (Discussion held off the record.)</p> <p>14 MR. DELGADO: Since the audience only has the</p> <p>15 yellow sheet, perhaps, then maybe you could tell them each</p> <p>16 slide where it is on the yellow sheet that we're talking</p> <p>17 about.</p> <p>18 MS. McCHESNEY: Just to clarify, all the public</p> <p>19 comment has occurred. Now you're hearing from the Staffs'</p> <p>20 rebuttal. The Staff needs to communicate with you what</p> <p>21 they want to communicate. The public isn't going to have</p> <p>22 an opportunity to say more. The Staff can clarify to the</p> <p>23 extent they can, but --</p> <p>24 MR. DELGADO: I understand. But it helps</p> <p>25 everyone if the public can follow along.</p> <p style="text-align: right;">Page 19</p>	<p>1 MR. THOMAS: Next slide, it's slide 28. I'm</p> <p>2 sorry the slides are not numbered.</p> <p>3 We agree with this edit as it is presented here.</p> <p>4 We're agreeing to make this change to the Order.</p> <p>5 I'm going to keep going unless you stop me.</p> <p>6 MR. YOUNG: That's fine. Just make sure we find</p> <p>7 the page before you advance.</p> <p>8 MR. DELGADO: I'm sorry. I hate to bugger up the</p> <p>9 process. It would be nice if you would justify the change</p> <p>10 or the disagreement. On the previous slide, you did not</p> <p>11 agree to the word registered. And I know that that makes</p> <p>12 a big difference, whether you talk about registered</p> <p>13 pesticides or all pesticides. And you're recommending all</p> <p>14 pesticides.</p> <p>15 MR. THOMAS: Yes.</p> <p>16 MR. DELGADO: So that's a big enough difference</p> <p>17 that I'd like you to explain the justification.</p> <p>18 MR. THOMAS: The reason that we took out</p> <p>19 registered is we thought -- it's possible that pesticides</p> <p>20 might be used that are not registered. That's all. We</p> <p>21 don't want to --</p> <p>22 MR. DELGADO: That's because not all pesticides</p> <p>23 need to be registered. There's a lot of things that you</p> <p>24 use to address pests that are not toxic enough to require</p> <p>25 registration; right? Like safe soaps. There's lots of</p> <p style="text-align: right;">Page 21</p>

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<p>1 things that you can use to kill pests.</p> <p>2 MR. YOUNG: Hold on one second.</p> <p>3 Folks, it is hard for us up here to hear clearly</p> <p>4 when there's mumbling in the background. I would</p> <p>5 encourage you, please don't do it.</p> <p>6 MR. DELGADO: My question is: Are there</p> <p>7 pesticides that are legal to use that are not required to</p> <p>8 be registered?</p> <p>9 MS. SCHROETER: We were just intending it to be</p> <p>10 inclusive of any type of pesticide used, registered,</p> <p>11 unregistered. Any type of thing, chemical, that you would</p> <p>12 use to control pests.</p> <p>13 MR. DELGADO: Right. So my question is: Are</p> <p>14 there pesticides that are legal to use in this context</p> <p>15 that are not required to be registered with the EPA?</p> <p>16 MS. SCHROETER: I'm not certain of that answer.</p> <p>17 What I'm thinking of, for example, are examples</p> <p>18 like the bait traps that currently -- I'm not sure that's</p> <p>19 a registered pesticide. That would be an example of what</p> <p>20 we were thinking of.</p> <p>21 MS. McCHESNEY: And just to clarify the point of</p> <p>22 this particular provision is that it's saying what is</p> <p>23 covered. So the Waiver is covering the discharge of those</p> <p>24 things. Whether it's a, quote, "registered pesticide" or</p> <p>25 not, it's just saying that's the scope of this provision.</p> <p style="text-align: right;">Page 22</p>	<p>1 that language be removed and added registered pesticides.</p> <p>2 We agree with that statement and just are simply saying</p> <p>3 that we want to remove the word registered. That might</p> <p>4 preclude some pesticides that are not --</p> <p>5 MR. DELGADO: Registered.</p> <p>6 MS. SCHROETER: -- registered.</p> <p>7 MR. JEFFRIES: I'm a little confused. I was</p> <p>8 under the impression that all pesticides are registered.</p> <p>9 MS. SCHROETER: That's not my understanding, but</p> <p>10 I am not an expert on pesticides.</p> <p>11 MR. JEFFRIES: Because homemade ones may not be.</p> <p>12 But, also, my understanding is before a farmer can apply</p> <p>13 pesticides, he has to file. He does not? I see people</p> <p>14 shaking their heads. They don't have to file that they're</p> <p>15 using that application on their particular farm?</p> <p>16 MS. SCHROETER: They -- I believe that they have</p> <p>17 to file if they're using a registered pesticide.</p> <p>18 MR. THOMAS: Mr. Chairman.</p> <p>19 MR. YOUNG: Let me just say something. We're</p> <p>20 getting bogged down on the trees and losing -- you know,</p> <p>21 we're losing sight of the forest here. This is just</p> <p>22 describing waste kind of generally. Whether it's</p> <p>23 registered or not, I don't think is really an issue.</p> <p>24 Pesticides. It's a type of waste that's involved in this.</p> <p>25 So there may be some that aren't; there may be some that</p> <p style="text-align: right;">Page 24</p>
<p>1 It's not saying that they're discharging unregistered</p> <p>2 pesticides just. It's just, this Waiver applies to things</p> <p>3 that constitute waste, and waste includes pesticides</p> <p>4 whether they're registered or not. It doesn't really</p> <p>5 matter if they're registered or not. For this purpose,</p> <p>6 it's just the scope of the Waiver so that they can be</p> <p>7 allowed to discharge that. Otherwise, if it doesn't cover</p> <p>8 it, they would have to go get some other permit to</p> <p>9 discharge.</p> <p>10 MR. DELGADO: So Staff is considering this to be</p> <p>11 in the favor of the growers by expanding the kinds of</p> <p>12 things that they can apply if it ever is needed to include</p> <p>13 things that are not registered pesticides?</p> <p>14 MS. SCHROETER: No. The context of this</p> <p>15 requirement is to talk about what can be discharged to</p> <p>16 water, what's covered by this Order.</p> <p>17 MR. DELGADO: You're thinking that deleting the</p> <p>18 word registered -- or leaving that word out is favorable</p> <p>19 to the growers because it allows them to discharge more?</p> <p>20 MS. McCHESNEY: No. It's not favorable or</p> <p>21 unfavorable. This is just a general statement that these</p> <p>22 kinds of things are the kinds of things that could be</p> <p>23 discharged under the Waiver. So, you know, it's --</p> <p>24 MS. SCHROETER: The language used to say, "such</p> <p>25 as organic pesticides. Tess, yesterday suggested that</p> <p style="text-align: right;">Page 23</p>	<p>1 are. For this purpose, I don't think it's going to make</p> <p>2 any difference at all. It is definitional.</p> <p>3 MR. JEFFRIES: It is definitional. And if it</p> <p>4 becomes an issue, it can be brought back to the Board and</p> <p>5 reconsidered.</p> <p>6 MR. YOUNG: Okay. Yeah. Like anything can be.</p> <p>7 MR. THOMAS: Next slide is Slide 28.</p> <p>8 MS. McCANN: They don't have the numbers.</p> <p>9 MS. HUNTER: We don't have the numbers.</p> <p>10 MR. THOMAS: I know. I thought that you might</p> <p>11 count them.</p> <p>12 MR. YOUNG: We don't have the numbers.</p> <p>13 MR. THOMAS: We agree with this change. So we're</p> <p>14 going to make this change.</p> <p>15 MR. JEFFRIES: As is?</p> <p>16 MR. THOMAS: As is.</p> <p>17 MR. JEFFRIES: This is a little easier to follow,</p> <p>18 this way.</p> <p>19 MR. THOMAS: We're not agreeing with this change</p> <p>20 on this next slide.</p> <p>21 MR. YOUNG: And why?</p> <p>22 MR. THOMAS: We don't think it's necessary to add</p> <p>23 the language, quote, "to the extent feasible," unquote.</p> <p>24 MR. DELGADO: For purpose of the audience, I'm</p> <p>25 not seeing this in the yellow sheet.</p> <p style="text-align: right;">Page 25</p>

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<p>1 MR. THOMAS: Because we're not agreeing to this</p> <p>2 change.</p> <p>3 MR. DELGADO: I want to back up on this because</p> <p>4 Tess was recommending the words, "to the extent feasible"</p> <p>5 be added to "Dischargers must to the extent feasible do X,</p> <p>6 Y, and Z regarding vegetative cover on the creeks, et</p> <p>7 cetera.</p> <p>8 To me, they're saying, to the extent feasible,</p> <p>9 give some wiggle room so that things considered infeasible</p> <p>10 would not be required of them to do. I think Staff is</p> <p>11 probably saying that that wiggle room is not room that</p> <p>12 they want to allow to be put into this language.</p> <p>13 I just wanted to make sure that that's the</p> <p>14 justification for not agreeing to this.</p> <p>15 MS. SCHROETER: There's two main reasons. One,</p> <p>16 it's difficult to define what is "to the extent feasible."</p> <p>17 It's an ambiguous term. The other reason is, that's a</p> <p>18 consideration with all of the requirements. So if a</p> <p>19 grower has difficulty implementing something because of</p> <p>20 feasibility, that would be a consideration. So we don't</p> <p>21 generally apply that to every single condition that we --</p> <p>22 MR. DELGADO: And I agree with this because I</p> <p>23 think that every time you have a shall or a must</p> <p>24 throughout this Ag Order, you could add those words, "to</p> <p>25 the extent practical, feasible," et cetera. And it</p> <p style="text-align: right;">Page 26</p>	<p>1 changes. I wanted to just go to the ones that we do. But</p> <p>2 we are --</p> <p>3 MR. YOUNG: I think we want -- I'd like to know</p> <p>4 which ones you're not agreeing to so we can just take a</p> <p>5 quick look at it.</p> <p>6 MR. THOMAS: Okay.</p> <p>7 MR. YOUNG: Read it quickly and then we can move</p> <p>8 on if we have no questions on it.</p> <p>9 MR. THOMAS: The next slide indicates where</p> <p>10 disturbance of aquatic habitat is necessary for the</p> <p>11 purposes of water quality improvement or restoration</p> <p>12 activities, Dischargers must implement appropriate and</p> <p>13 practical measures.</p> <p>14 We disagree with the deletion. We think that is</p> <p>15 necessary and reasonable language.</p> <p>16 MS. SCHROETER: But we also added language to</p> <p>17 clarify that it relates to the other permitted activities.</p> <p>18 So things like the 40, the stream alteration agreements --</p> <p>19 actually the 401 certifications. So the change would be</p> <p>20 in a case where disturbance of aquatic habitat is</p> <p>21 necessary for the purposes of water quality improvement or</p> <p>22 restoration activities or other permitted activities. So</p> <p>23 just to clarify that it wasn't only for those water</p> <p>24 quality improvement.</p> <p>25 MR. THOMAS: If that makes sense, we're saying</p> <p style="text-align: right;">Page 28</p>
<p>1 doesn't really change much. But if we're going to change</p> <p>2 it in one place, we'd want to wholesale change it</p> <p>3 everywhere throughout the document. Right? Everywhere</p> <p>4 you had a must or a shall, we could be at this place of</p> <p>5 considering this addition.</p> <p>6 MR. THOMAS: The existing language also says, "in</p> <p>7 aquatic habitat areas as necessary to minimize." So we</p> <p>8 already have language in there that provides wiggle room.</p> <p>9 MR. DELGADO: That's wiggle room in a different</p> <p>10 way; right?</p> <p>11 MR. THOMAS: Uh-huh.</p> <p>12 MR. DELGADO: "As necessary" is different than</p> <p>13 feasible.</p> <p>14 MR. THOMAS: Uh-huh.</p> <p>15 MS. McCHESNEY: No. I think the wiggle room is</p> <p>16 "minimize." You're not stopping it, just minimizing. So,</p> <p>17 you know, that's -- the feasibility fits into that.</p> <p>18 MR. DELGADO: You've got two wiggles. You don't</p> <p>19 need three.</p> <p>20 MS. McCHESNEY: Exactly.</p> <p>21 MR. YOUNG: Okay. Next one.</p> <p>22 MR. THOMAS: Next one, we don't agree with the</p> <p>23 change. My intent in going through these was actually to</p> <p>24 stop on the ones where we agree with changes and not spend</p> <p>25 a lot of time on the ones where we don't agree with the</p> <p style="text-align: right;">Page 27</p>	<p>1 that there can be disturbance of aquatic habitat. And it</p> <p>2 could be done as part of a stream alteration agreement or</p> <p>3 a 401 certification program -- or 401 certification. And</p> <p>4 there are requirements associated with those. For</p> <p>5 whatever reason the farmer would need to create that</p> <p>6 disturbance, they can get a permit to do it.</p> <p>7 MS. McCHESNEY: Angela, it looks like you skipped</p> <p>8 over Paragraph 35, Page 19, the one --</p> <p>9 MS. SCHROETER: It's going to come up.</p> <p>10 MS. McCHESNEY: Okay. Sorry.</p> <p>11 MR. DELGADO: We have a question to the Chair.</p> <p>12 Do we care about grammar or English details at this point</p> <p>13 or does that get cleaned up later by Staff?</p> <p>14 MR. YOUNG: It doesn't get cleaned up later.</p> <p>15 MR. DELGADO: Okay.</p> <p>16 MR. YOUNG: When we vote on something --</p> <p>17 MR. DELGADO: Okay. So normally when you say</p> <p>18 "or," you only say it once. So I would say purposes of</p> <p>19 water quality improvement, comma, delete the first or,</p> <p>20 restoration activities or other permitted activities.</p> <p>21 Just like an and. You wouldn't use an and over and over.</p> <p>22 MS. McCHESNEY: What I would suggest for that is</p> <p>23 you note it. And then if the Board ends up choosing to</p> <p>24 make those revisions, then we can correct all that then.</p> <p>25 We can identify the ones.</p> <p style="text-align: right;">Page 29</p>

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<p>1 MR. DELGADO: Is somebody logging all these 2 little details? 3 MS. McCHESNEY: Yeah. 4 MR. DELGADO: I hate to get to this level. I 5 just wanted to ask the Chair what he thought about 6 grammar, small details. 7 MR. YOUNG: I haven't been concerned with grammar 8 up until now. I hate to admit that. If I can read it and 9 understand it, you know, I'm usually good with that. 10 MS. McCHESNEY: If it's a non-substantive 11 grammar, that can be corrected without needing a Board's 12 vote. 13 MR. YOUNG: If there's confusion to the way it's 14 written, yes, we've got to get it corrected. 15 MR. DELGADO: Thank you. 16 MR. YOUNG: Tell me what page we're on. 17 MR. THOMAS: 31, Slide 31. 18 MR. YOUNG: What paragraph number is that in -- 19 okay. Page 43. 20 Okay. 21 MR. THOMAS: This suggestion is to add language. 22 Farm plans must be kept current, kept on the farm, and a 23 current copy must be made available to Central Coast Water 24 Board Staff upon request. The edit is to -- recommended 25 edit is to add the language "should Central Coast Water</p> <p style="text-align: right;">Page 30</p>	<p>1 there's one exceedance of water quality centered -- more 2 than one within three years or upon the request of the 3 Executive Officer. 4 This is the normal process for the Board to 5 implement its laws is to require technical reports be 6 submitted upon request. So this would say the Staff would 7 have to go to the farm, look at it, and then they couldn't 8 take it back to evaluate it. 9 MR. YOUNG: Mr. Johnston. 10 MR. JOHNSTON: Just to be clear about what the 11 concern is that's being expressed, I don't think it's a 12 concern that it would somehow slip out the back door of 13 the Water Board. The concern is: That except for 14 proprietary information in that report, that report, once 15 its received here, does become publically accessible 16 information. 17 MR. YOUNG: Right. 18 MS. McCHESNEY: Right. But that's not correct. 19 They can identify the proprietary information, and the 20 Board is obligated by law to keep it protected. And they 21 already do that. There's quite a few reports in all the 22 different programs that are submitted regularly that 23 have -- basically two reports are submitted, the redacted 24 report with the confidential information deleted. That's 25 the public report and then a private report that this</p> <p style="text-align: right;">Page 32</p>
<p>1 Board Staff conduct an inspection of the farm or ranch. 2 MR. YOUNG: Right. 3 MR. THOMAS: We don't agree with that edit. That 4 information should be made available upon represent, not 5 based on a visit. 6 MR. YOUNG: Right. 7 MR. DELGADO: Okay. So comment here. It's 8 obviously a big trust issue. They don't want a document 9 leaving the site because it could be copied, distributed, 10 to who knows -- as far as their perspective, to who knows 11 who. So this is a pretty big issue. Right? 12 We shouldn't be making it up one way or the 13 other. What's the industry standard? How do other 14 regions handle farm plan -- 15 MS. McCHESNEY: I can answer that. 16 First of all, under the Water Code, the Board has 17 the authority to require the submittal of technical 18 reports. My recommendation on this is that I can't advise 19 you to accept this edit because the Board has the right 20 and responsibility to have technical reports submitted to 21 them so that they can evaluate water quality. 22 This would, then, preclude the Board from getting 23 information. It's already in the current Order. The 24 Central Valley Order requires these kinds of reports to be 25 submitted as soon as there's one -- automatically if</p> <p style="text-align: right;">Page 31</p>	<p>1 Staff keeps separately. And that happens in many 2 programs. All the regional Boards deal with this on a 3 regular basis. 4 MR. YOUNG: Okay. 5 MS. McCHESNEY: Just so you know, the Order does 6 very clearly state how the processor, how the person would 7 identify what is proprietary. And they can do that. 8 MR. JOHNSTON: Just out of curiosity, is there a 9 template for these reports? Remind me. I forget. 10 MS. McCHESNEY: I don't know. 11 MR. JOHNSTON: At this point for the farm plan -- 12 at this point that -- what -- there's no clarity as to 13 whether what an individual farmer would consider 14 proprietary and what we would consider proprietary in 15 terms of general categories, whether those would coincide; 16 correct? 17 MS. McCHESNEY: Correct. That's why it's up to 18 the farmer to identify what they think is proprietary. 19 And there's quite a bit of case law. This has been a big 20 issue in the case law about how to do that, including in 21 the area of agricultural information. But it's really up 22 to them to identify what they think is confidential. 23 And it only becomes an issue if then someone 24 makes a public record act request for the document and 25 then which -- the process then is to go back to the farmer</p> <p style="text-align: right;">Page 33</p>

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<p>1 and say, "Justify why you think this is proprietary</p> <p>2 because we've been asked for it." So it's not released</p> <p>3 until they agree to it.</p> <p>4 MR. JOHNSTON: I know we're well past the</p> <p>5 eleventh hour. Were we not, it would certainly be nice to</p> <p>6 simply have a definition of what the case law says is</p> <p>7 proprietary. That might answer the question.</p> <p>8 MS. McCHESNEY: Yeah. It's really up to them to</p> <p>9 say what they think is proprietary. I've actually been</p> <p>10 doing -- been an attorney for the Board now for 25 years</p> <p>11 and only once has anybody ever asked for a report. It's</p> <p>12 even been an issue in my experience. It's been pretty</p> <p>13 straightforward. They identify it; we keep it</p> <p>14 confidential.</p> <p>15 MR. YOUNG: Okay. Continue.</p> <p>16 MR. THOMAS: Next slide, Paragraph 46, Page 21.</p> <p>17 The recommendation is to delete this text. And the rather</p> <p>18 than read it all, I will read instead our reason for not</p> <p>19 agreeing with the deletion.</p> <p>20 This finding is a high property inclusion for</p> <p>21 environmental justice. Individuals concerned about</p> <p>22 drinking water and other stakeholders, they've expressed</p> <p>23 concern about this very issue and wanted it to be in the</p> <p>24 Order. And the State Water Board does have goals with</p> <p>25 respect environmental justice as I mentioned yesterday.</p> <p style="text-align: right;">Page 34</p>	<p>1 MR. JEFFRIES: All right.</p> <p>2 MR. YOUNG: Okay. Continue.</p> <p>3 MR. THOMAS: Next slide I'm going to skip because</p> <p>4 we're going to deal with Part E in a few minutes.</p> <p>5 Next slide is Paragraph 52, Page 22. We're not</p> <p>6 going to add this language here as suggested because we</p> <p>7 have included this language in the monitoring and</p> <p>8 reporting program, and it's not necessary to make this</p> <p>9 change and include it in the Order, as well.</p> <p>10 MR. DELGADO: Does it hurt or reduce the quality</p> <p>11 of the document to include it in an additional location as</p> <p>12 they're suggesting?</p> <p>13 MS. SCHROETER: No, it doesn't.</p> <p>14 MS. McCHESNEY: Well, I had a concern with it</p> <p>15 because it's kind of ambiguous the way it's written;</p> <p>16 whereas, in the MRP, it's much more clearly stated under</p> <p>17 what circumstances you either do individual or group</p> <p>18 monitoring. So to put this kind of general thing here</p> <p>19 creates ambiguity later when -- because the MRP -- because</p> <p>20 the sentence is to comply with the MRPs. The MRP includes</p> <p>21 the language that's very specific about how you do group</p> <p>22 monitoring.</p> <p>23 MS. SCHROETER: The MRP is much more specific</p> <p>24 about the areas in which it applies.</p> <p>25 MR. DELGADO: So this might be an example of a</p> <p style="text-align: right;">Page 36</p>
<p>1 MR. DELGADO: And I wanted to jump in here</p> <p>2 because the rationale I heard from Tess for deleting this</p> <p>3 was that it was redundant under the law so that it's</p> <p>4 inappropriate to include it as a condition of the Waiver.</p> <p>5 MS. McCHESNEY: Right.</p> <p>6 And, actually, it shouldn't be in this portion.</p> <p>7 I agree with Tess, too, that it should be -- this is the</p> <p>8 Order part. It should be -- it can be a finding in the</p> <p>9 Order. It's not an Order. It's not a part of the Order</p> <p>10 part.</p> <p>11 MR. THOMAS: I agree. That's our mistake. We</p> <p>12 agreed last night that this was going to be moved and made</p> <p>13 an Order --</p> <p>14 MS. McCHESNEY: Made a finding.</p> <p>15 MR. THOMAS: -- made a finding --</p> <p>16 MS. McCHESNEY: Right.</p> <p>17 MR. THOMAS: -- and not a condition.</p> <p>18 MS. McCHESNEY: Right. It's just like more</p> <p>19 notice to people that these are the kinds of things that</p> <p>20 can happen.</p> <p>21 MR. JEFFRIES: This language will be kept, but it</p> <p>22 will be kept in a finding?</p> <p>23 MR. YOUNG: Correct.</p> <p>24 MS. McCHESNEY: Correct. Just an</p> <p>25 informational --</p> <p style="text-align: right;">Page 35</p>	<p>1 subsequent plain English summary of the Ag Waiver could</p> <p>2 say something about this being allowed either individually</p> <p>3 or through a cooperative Monitoring Program. If you</p> <p>4 choose to do it one way or the other, you need to refer to</p> <p>5 the MRP for further direction. It's just something to</p> <p>6 keep in mind as an example of a subsequent plain English</p> <p>7 summary.</p> <p>8 MS. SCHROETER: So this is just a list of items</p> <p>9 in the electronic -- or I'm sorry in the Notice of Intent.</p> <p>10 They suggested an option related to Part E. We're going</p> <p>11 to discuss that in a moment so I won't talk about that</p> <p>12 one.</p> <p>13 The second one is a suggestion to add a place on</p> <p>14 the NOI to identify cooperative groundwater monitoring</p> <p>15 similar to the cooperative surface water monitoring</p> <p>16 selection. And that's fine. We agree with that.</p> <p>17 There was an additional suggestion at the end to</p> <p>18 delete information on the Notice of Intent which is asking</p> <p>19 farmers if there is the presence and location of any</p> <p>20 perennial or intermittent or ephemeral streams or riparian</p> <p>21 or wetland habitats on their farm.</p> <p>22 We disagree with this deletion. What it does is,</p> <p>23 having that checkbox, it really is just a checkbox in</p> <p>24 terms of, do you have a stream adjacent to or running</p> <p>25 through your property. It allows us to identify those</p> <p style="text-align: right;">Page 37</p>

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<p>1 farms quickly and to prioritize those if necessary. So we 2 disagree with that deletion. 3 MR. DELGADO: Chair, can I jump in? 4 MR. YOUNG: Yes. 5 MR. DELGADO: What I have down that Tess stated 6 on this was that there was no need for a standalone 7 requirement. Those are my words. I may be incorrect. 8 But if I'm correct, is this a standalone 9 requirement, or is it just a checklist item? 10 MS. SCHROETER: This is just a checkbox on the 11 Notice of Intent. 12 What I understood from Ms. Dunham yesterday was 13 she said it was not necessary because they already 14 included the farm map and that the locations of streams 15 were located on the farm map. That's what was written in 16 my notes. 17 This is simply a checkbox. Do you have a creek 18 or not. Without the checkbox, Staff has to go into every 19 single farm map and look at them and see who has a creek 20 running through their property or not. This is just a 21 checkbox to say presence, absence, and allows us to 22 prioritize them quickly. 23 MR. JOHNSTON: What I recall from the discussion 24 wasn't just that you could get this information from the 25 farm map, but that the question of figuring out -- some of</p> <p style="text-align: right;">Page 38</p>	<p>1 It's merely a screening tool for us. 2 MR. DELGADO: To me a wetland habitat means, in 3 my mind, a pond or a lake. That's your interpretation, as 4 well? 5 MS. SCHROETER: I think that's a fair 6 characterization. 7 MR. DELGADO: All right. 8 MR. YOUNG: The definition may be more 9 complicated than that as to what's a wetland. 10 MR. DELGADO: The official definition is more 11 complicated than that? 12 MR. YOUNG: Yes. 13 MR. DELGADO: But in the farmers' minds and in my 14 mind, a wetland looks different than a creek. It looks 15 like a round object that has surface water. 16 MS. SCHROETER: There is actually a definition in 17 the Order. 18 MR. YOUNG: Yeah. It could be a marsh. 19 MS. McCHESNEY: I don't know if you heard Angela. 20 There is a definition in the Order. They can look at that 21 and say "yes" or "no." 22 MR. YOUNG: Okay. 23 MR. DELGADO: In real-life, I think when they 24 fill this out, they're going to check the box according to 25 their mindset. They're not going to go look for the</p> <p style="text-align: right;">Page 40</p>
<p>1 these things -- it's easy to know if you have a stream. 2 If you have a wetland area habitat, her statement was that 3 could require a fairly comprehensive study to answer the 4 question, that some of these -- some of the categories 5 that are in -- I can't really tell from this if it's N 6 or -- the last one there. 7 MR. YOUNG: N. 8 MR. JOHNSTON: -- are fairly obvious, and some 9 are not, and that you would not necessarily get an 10 accurate answer. 11 MS. SCHROETER: This is just a screening level. 12 So we're not using it as a definitive interpretation of 13 whether or not it's an actual wetland per the definition. 14 What we're looking at, is there streams, creeks, or other 15 wetland area, riparian types of habitat running through 16 the property or adjacent to the property. 17 MR. YOUNG: In other words, you're not expecting 18 them to hire an expert to help them answer those 19 questions? 20 MS. SCHROETER: No. 21 MR. YOUNG: It's if they know? 22 MS. SCHROETER: That's correct. 23 MR. JOHNSTON: And it won't change their tier 24 depending on how they answer? 25 MS. SCHROETER: It does not change their tier.</p> <p style="text-align: right;">Page 39</p>	<p>1 definition buried in the Order. 2 MR. JOHNSTON: Right. 3 MR. DELGADO: If they see a seepy area with water 4 on top of it, they may not think of that as a wetland area 5 and they may not check that box or put that on a map. 6 MS. SCHROETER: One thing we could do, then, to 7 address your comment, Mr. Delgado, is, similar to other 8 areas of the Notice of Intent already, we have a link on 9 the side for those that require more definition. And you 10 simply click on that wetland and the definition pops up so 11 they can see it right there. 12 MR. THOMAS: I'm going to skip the next slide. 13 (Recess taken.) 14 MS. SCHROETER: We're moving to Part E. Just to 15 summarize, those are all of the edits, our response to all 16 of the edits, that would result in an edit to the Order 17 based upon the input from Farmers For Water Quality. We 18 do have additional edits which are shown on the yellow 19 sheet which we'll discuss later which are a result of 20 Board member discussion. 21 MR. YOUNG: Are you moving to E right now? 22 Because there's some other pages in here that don't 23 involve E, I believe. Like they've got a Paragraph 61, 24 Page 25. I'm assuming you're not in agreement with adding 25 that language. Oh, cause it does --</p> <p style="text-align: right;">Page 41</p>

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<p>1 MS. McCHESNEY: That is Part E.</p> <p>2 MR. YOUNG: That is Part E. Okay. Gotcha.</p> <p>3 All right.</p> <p>4 MR. JOHNSTON: There was also some groundwater</p> <p>5 monitoring stuff. Maybe that's going to be covered in</p> <p>6 your Part E, also. Attachments 2A, B, and C.</p> <p>7 MS. SCHROETER: That specific edit also relates</p> <p>8 to some changes related to Board member discussion. So</p> <p>9 we'll capture those in a moment.</p> <p>10 MR. JOHNSTON: Thank you.</p> <p>11 MR. THOMAS: With respect to Attachment E, it</p> <p>12 was --</p> <p>13 MS. HUNTER: Is it Attachment or Part?</p> <p>14 MR. THOMAS: Part E.</p> <p>15 MS. HUNTER: Part E. Thank you.</p> <p>16 MR. THOMAS: Part E, language was proposed to add</p> <p>17 New Part E. The Board directed us to evaluate that</p> <p>18 language and to consider the pros and cons and answer the</p> <p>19 question about what would be the most effective Order.</p> <p>20 MS. HUNTER: Question.</p> <p>21 MR. THOMAS: So the pros --</p> <p>22 MS. HUNTER: Question.</p> <p>23 MR. THOMAS: Yes.</p> <p>24 MS. HUNTER: I have a question.</p> <p>25 Can you tell me the title of Part E and where I</p> <p style="text-align: right;">Page 42</p>	<p>1 to their Attachment B. Their third party group proposal</p> <p>2 that they submitted in March and May, they are proposing</p> <p>3 changes to that, and that's going to be E. It would be a</p> <p>4 new E, and then E would become F, and F would become G.</p> <p>5 MR. DELGADO: Okay. The reason I'm a little bit</p> <p>6 confused is because the title of their Part E is pretty</p> <p>7 much the same as the title of our existing Part E. So you</p> <p>8 would have an E and an F that would had the same title.</p> <p>9 MS. McCANN: There is a difference. Their title</p> <p>10 says, Additional conditions that apply to Tier 2 and</p> <p>11 Tier 3 Dischargers -- this is what's new -- through</p> <p>12 participation in third party group. And ours which does</p> <p>13 not say per third party group will become Part F. Wait a</p> <p>14 minute.</p> <p>15 MR. THOMAS: The pros of the new language, the</p> <p>16 new language that was proposed. There is more detail here</p> <p>17 on a potential coalition concept, and that's a good thing.</p> <p>18 It looks like they did more work on it, thought about it</p> <p>19 more, and provided a little bit more detail.</p> <p>20 We thought that was a good thing. We also think</p> <p>21 that coalitions could be very helpful in the overall</p> <p>22 implementation of the Order, the Water Board's Order, and</p> <p>23 that would include any Order. That includes the 2004</p> <p>24 Order or this proposed 2012 Order.</p> <p>25 They really could help tremendously with</p> <p style="text-align: right;">Page 44</p>
<p>1 can find it in the Order so that I'm sure that I</p> <p>2 understand what we're talking about. In this case, I do</p> <p>3 want to know where I am in the document.</p> <p>4 MS. McCANN: You're asking where in the Order?</p> <p>5 MS. HUNTER: (Nods head.)</p> <p>6 MS. McCANN: Page 26. This is where they are</p> <p>7 recommending to insert --</p> <p>8 MS. McCHESNEY: It's not in the Order.</p> <p>9 MS. McCANN: -- a New Part E.</p> <p>10 MS. McCHESNEY: It's their PowerPoint --</p> <p>11 MS. HUNTER: Right.</p> <p>12 MS. McCHESNEY: -- with the new part.</p> <p>13 MS. HUNTER: What I'm saying is, we already have</p> <p>14 a Part E. On Page 26, there is a Part E.</p> <p>15 MS. McCHESNEY: It would replace their proposed</p> <p>16 Attachment B with a New Part E.</p> <p>17 MS. HUNTER: But where does the New Part E</p> <p>18 belong? That's my question.</p> <p>19 MS. McCHESNEY: Renumber, reletter. So E -- it</p> <p>20 would be a new E, and E would become F.</p> <p>21 MS. HUNTER: Become F. Okay. That's what I</p> <p>22 wasn't clear on. Okay. Got it.</p> <p>23 MR. DELGADO: So they would replace the Part E</p> <p>24 that's in the Waiver with their Part E?</p> <p>25 MS. McCHESNEY: No. They're making some changes</p> <p style="text-align: right;">Page 43</p>	<p>1 education, assistance, outreach coordination and grants,</p> <p>2 inspections, providing incentives, awards, collaboration</p> <p>3 and leveraging of their efforts with others. I think the</p> <p>4 coalitions also could help facilitate broad scale</p> <p>5 implementation. That includes Dr. Los Huertos' ideas.</p> <p>6 And I specifically call them ideas because they</p> <p>7 are ideas. They're not developed. They're just concepts</p> <p>8 or ideas that he has been working on for some time. As he</p> <p>9 has said, he's not actually working for anyone right now.</p> <p>10 They're just his ideas.</p> <p>11 We've talked to him about this individually</p> <p>12 outside these Board hearings about where he actually</p> <p>13 stands with this. And he's told us he does not have</p> <p>14 support, he does not have an infrastructure, he does not</p> <p>15 have an organization, or the support from any organization</p> <p>16 to implement what he's talking about doing. He's told us</p> <p>17 that it is purely an idea.</p> <p>18 I'm not trying to knock the idea. I'm just</p> <p>19 trying to put it in the context of how he is presenting</p> <p>20 it. Because there's -- we heard a lot yesterday and at</p> <p>21 the last workshop, that we really want you to implement</p> <p>22 Dr. Los Huertos' proposal. And it's not a proposal that</p> <p>23 can be implemented.</p> <p>24 You also heard from Sarah Lopez yesterday about</p> <p>25 the Quail Creek Project that she did with Preservation,</p> <p style="text-align: right;">Page 45</p>

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<p>1 Inc.</p> <p>2 We think that the work that they did their to</p> <p>3 reduce loading is great. We think the coalitions could</p> <p>4 cause more of that type of work to be done. And we would</p> <p>5 be very supportive of that.</p> <p>6 You also heard from Ross Clark who talked about</p> <p>7 Wetland Treatment Systems. And I don't know if I got the</p> <p>8 name of his organization correct there. I just was going</p> <p>9 by memory.</p> <p>10 MS. HUNTER: Yeah. I think it's Central Coast</p> <p>11 Watershed Group.</p> <p>12 MR. THOMAS: Central Coast Watershed Group.</p> <p>13 Sorry about that.</p> <p>14 The kind of work that Ross Clark was talking</p> <p>15 about, we are highly supportive of. We agree with his</p> <p>16 presentation, and we think it was outstanding. We think</p> <p>17 the work that he's doing and is proposing to do is</p> <p>18 outstanding. We will do everything that we possibly can</p> <p>19 to help him implement those types of projects. And we</p> <p>20 think coalitions would be a big help in doing that. I</p> <p>21 actually think that it would be necessary to do it, the</p> <p>22 kind of collaboration that they could provide.</p> <p>23 The cons. It is still a concept, though we think</p> <p>24 it is a concept that could be done. By saying it's a</p> <p>25 concept, I'm not trying to be overly critical, I'm not</p> <p style="text-align: right;">Page 46</p>	<p>1 presented are too long. These Orders -- the one before</p> <p>2 the Board and the 2004 Order have a five-year term. They</p> <p>3 have to be renewed in five years for a reason.</p> <p>4 We are required to -- in order to be consistent</p> <p>5 with the law, we need to determine the effectiveness of</p> <p>6 the Order. At the end of five years, we need to be able</p> <p>7 to say to the Board and the public and ourselves and the</p> <p>8 growers how effective that Order is. We need to know that</p> <p>9 so that when we renew it, we can make changes that are</p> <p>10 necessary to ensure that the Order is effective.</p> <p>11 MR. YOUNG: Are you, Michael, referring to the</p> <p>12 2015 date that was proposed as unacceptable because it's</p> <p>13 too long term?</p> <p>14 MS. McCANN: I'm not sure what you're referring</p> <p>15 to. In here, we have a replacement for our timeline with</p> <p>16 the first milestone at eight years out. I would have to</p> <p>17 look at it to tell you what the other ones are.</p> <p>18 MR. BRIGGS: I think there was an 8-15.</p> <p>19 MS. McCANN: Yeah. Maybe that's what --</p> <p>20 MS. HUNTER: It's under Part G? Is that revised</p> <p>21 in Part G, the time frame?</p> <p>22 MS. McCHESNEY: Yes, it would be G.</p> <p>23 MS. McCANN: Yes. It would be their Part H</p> <p>24 replacing our Part G with time schedules that are outside</p> <p>25 the term of the Order five years -- excuse me -- eight</p> <p style="text-align: right;">Page 48</p>
<p>1 trying to kill the idea. I actually hope that it is</p> <p>2 developed, and that we do implement it -- or that the</p> <p>3 industry does implement it. And there may be more than</p> <p>4 one coalition. We don't know at this point.</p> <p>5 We're still missing key indicators of pollution</p> <p>6 reduction and practice effectiveness. The language that</p> <p>7 is proposed is not what Dr. Los Huertos was proposing,</p> <p>8 even though what he was proposes was in concept, it's not</p> <p>9 the same thing -- or it's not the same as what Sarah Lopez</p> <p>10 did and what she described.</p> <p>11 If you were to look at the Preservation project</p> <p>12 that Sarah implemented -- it's already done, that project</p> <p>13 is already done -- there's a great amount of detail there.</p> <p>14 It's a scientifically based project. It's statistically</p> <p>15 significant. The design is based on science and achieving</p> <p>16 statistically significant results.</p> <p>17 That kind of approach, that kind of information,</p> <p>18 is not included in this concept. Again, I don't mean to</p> <p>19 be overly critical here. I'm just trying to point out</p> <p>20 that what the context is for this language. And there</p> <p>21 also isn't a point of compliance, which we discuss in our</p> <p>22 Draft Order.</p> <p>23 There's also no risk-based prioritization</p> <p>24 criteria such as what we have in our Order. No milestones</p> <p>25 or targets within the term of the Order. The time frames</p> <p style="text-align: right;">Page 47</p>	<p>1 years. And I think Roger's correct, 15.</p> <p>2 MR. DELGADO: Can you explain the difference</p> <p>3 between milestones, targets, and time frames? When I see</p> <p>4 the time frames that they suggested, I kind of thought of</p> <p>5 those as milestones. Can you explain the difference.</p> <p>6 MS. McCANN: I think we're using milestones and</p> <p>7 targets interchangeably. So maybe we didn't need two</p> <p>8 words there. Or maybe another way to say it is a</p> <p>9 milestone is a target plus a time frame.</p> <p>10 What are we trying to achieve, that's a target.</p> <p>11 And what's the time frame that we want to achieve it or</p> <p>12 the date we want to achieve it by. So we have, for</p> <p>13 example, indicate pollution reduction with some indicators</p> <p>14 by a set date. It's fair to say that they also have some</p> <p>15 targets with time frames. I think you're calling those</p> <p>16 milestones now. But they're eight years and fifteen years</p> <p>17 out.</p> <p>18 MR. DELGADO: When you say no milestones/targets,</p> <p>19 is that true, or did they have some?</p> <p>20 MS. McCANN: Let me clarify. You have to read</p> <p>21 the other part of that phrase. Within the term of the</p> <p>22 Order. There's nothing proposed as a set goal that we</p> <p>23 would measure something by in terms of pollution reduction</p> <p>24 or effectiveness of management practices with a date that</p> <p>25 is within the term of the Order the way the language is</p> <p style="text-align: right;">Page 49</p>

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<p>1 written.</p> <p>2 MR. DELGADO: So they may have a target of</p> <p>3 certifying at least 20 percent of the participating farms</p> <p>4 to an audit. But that certification, that target, is not</p> <p>5 a water quality numeric target. It's a process target,</p> <p>6 sort of.</p> <p>7 MS. McCANN: I agree with your assessment, but I</p> <p>8 wasn't trying to distinguish between water quality and</p> <p>9 other types of targets here. Now you're raising a</p> <p>10 slightly different issue which is, if there are -- to the</p> <p>11 extent that there are some -- we'll call them process</p> <p>12 targets to use your term -- they're not reported or</p> <p>13 they're reported at such a high level, that they won't</p> <p>14 tell us how much progress we're making in pollution</p> <p>15 reduction or advancing towards water quality improvement.</p> <p>16 MR. BRIGGS: Lisa, back from the mic just a hair.</p> <p>17 MS. HUNTER: By high level, you mean aggregate?</p> <p>18 They're reported at an aggregate level that does not allow</p> <p>19 us to understand what's happening? I don't know what you</p> <p>20 mean by high.</p> <p>21 MS. McCANN: As far as the language that is in</p> <p>22 here to be added to the Order, that remains unclear. But</p> <p>23 when I say high level, aggregate is not -- it's not just</p> <p>24 aggregate that's high level. It's what's scale and what's</p> <p>25 the indicator that we're aggregating the information. I</p> <p style="text-align: right;">Page 50</p>	<p>1 requirements. That's what I think I heard.</p> <p>2 MS. McCHESNEY: No. I think he said they were</p> <p>3 some policy, some legal.</p> <p>4 MR. DELGADO: Okay. I missed that. Thank you.</p> <p>5 MR. YOUNG: Yeah.</p> <p>6 MR. THOMAS: So the next thing is that we don't</p> <p>7 think that the language is responsive to the threat to</p> <p>8 human health. And that includes not focusing on --</p> <p>9 because it does not focus on shallow groundwater where</p> <p>10 most domestic wells are located and where the threat to</p> <p>11 human health is greatest. There are no targets or</p> <p>12 indicators of nitrate-loading reduction, no advanced</p> <p>13 requirements for higher risk operations, operations where</p> <p>14 the threat is greater, which is how our Order is designed.</p> <p>15 The last item there, the language and the</p> <p>16 approach does not meet the legal standard. We talked to</p> <p>17 our attorney about this last night and this morning. And</p> <p>18 the Board -- members of the Board said yesterday that</p> <p>19 Board counsel's advice is a high bar. Just so you know,</p> <p>20 from the Staffs' perspective, it's the bar.</p> <p>21 When we have the conflicting attorneys, attorneys</p> <p>22 giving conflicting interpretations, we take the advice of</p> <p>23 the Board's legal counsel. We don't take the advice of</p> <p>24 other counsel.</p> <p>25 I don't know if you want to jump in here,</p> <p style="text-align: right;">Page 52</p>
<p>1 am talking about things like numbers of growers or types</p> <p>2 of practices.</p> <p>3 MS. HUNTER: Okay.</p> <p>4 MR. YOUNG: Go ahead.</p> <p>5 MR. JOHNSTON: Just a quick question here.</p> <p>6 Is this list of cons the list of policy and legal</p> <p>7 issues which would have to be resolved to utilize this</p> <p>8 concept or is that coming separately?</p> <p>9 MR. THOMAS: These things would have to be</p> <p>10 resolved, yes.</p> <p>11 MR. JOHNSTON: I understand.</p> <p>12 So this is that list that I was asking for last</p> <p>13 night; is that correct?</p> <p>14 MR. THOMAS: Yes.</p> <p>15 MR. JOHNSTON: Okay. I want to let you walk</p> <p>16 through it, and then I've got some questions about</p> <p>17 different things.</p> <p>18 MR. DELGADO: Okay. I have to jump in if I</p> <p>19 could, Chair, because I don't see all these as legal.</p> <p>20 Having risk-based prioritization criteria, is that a legal</p> <p>21 requirement?</p> <p>22 MR. YOUNG: They're going to get to that.</p> <p>23 Whether it's legal or not, they're --</p> <p>24 MR. DELGADO: They just did get to that. They</p> <p>25 said, I think, that everything up there are legal</p> <p style="text-align: right;">Page 51</p>	<p>1 Frances.</p> <p>2 MS. McCHESNEY: I don't know.</p> <p>3 Do you want to hear my -- these are a couple</p> <p>4 issues that I had identified as concerns I have with their</p> <p>5 proposal.</p> <p>6 So the first one is that Ms. Dunham has expressed</p> <p>7 the concern that the proposed Order would somehow be</p> <p>8 interpreted to require immediate compliance with Water</p> <p>9 Quality Standards because it says, "Dischargers shall</p> <p>10 comply with Water Quality Standards and protect beneficial</p> <p>11 uses and prevent nuisance."</p> <p>12 And my comment on that has been that it's the</p> <p>13 language in the existing Order, it's the language in all</p> <p>14 the other Orders adopted by other regional Boards</p> <p>15 regarding compliance of Water Quality Standards, it's the</p> <p>16 requirement of the law that they comply with Water Quality</p> <p>17 Standards.</p> <p>18 Where the issue has come up is that there seems</p> <p>19 to be this view that the language means that -- assuming</p> <p>20 the Board adopts something today, that tomorrow everybody</p> <p>21 is going to be out of compliance. But there are</p> <p>22 numerous -- with the Water Quality Standards, there are</p> <p>23 numerous provisions in the Order, both in the findings and</p> <p>24 in the Order part that make it clear that for purpose --</p> <p>25 and in the State Water Board's policy on the Non Point</p> <p style="text-align: right;">Page 53</p>

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<p>1 Source Policy, for nonpoint sources, compliance with Water 2 Quality Standards means to implement management practices. 3 If they aren't effective in reducing discharges to meet 4 Water Quality Standards, that they revise or do new 5 management practices. 6 And it's been made clear in the Order. It's the 7 same language in the Central Valley Order that the Staff 8 has proposed and is currently in the Order. It has not 9 resulted -- it's the same language that's in the Coalition 10 Group Waiver for -- in the Central Valley. It has not 11 resulted in any enforcement actions for not complying with 12 Water Quality Standards. 13 So my recommendation that it not be changed 14 because it's -- it implements a law, and it's been 15 carefully defined within the Order. 16 Tess proposed a different way to address that 17 issue in her proposal, which is the Paragraphs 21 and 22. 18 You know, if you -- there are ways to write it in the way 19 she's proposed, but it would take some rewriting because 20 of some issues that she's raised by her proposed rewrites. 21 And I would -- you know, if you want to consider 22 her proposal, I'd be happy to talk about what I would 23 change about her proposal. But I really think it's 24 working the way it's working. It's a requirement of the 25 law to require compliance with Water Quality Standards.</p> <p style="text-align: right;">Page 54</p>	<p>1 here at midnight tonight. 2 You know, Staff has done an impressive job on, I 3 suspect, very little sleep of responding to a tremendous 4 volume of stuff. I suggest that we let them finish their 5 presentation. And to the extent that we don't understand 6 stuff that they're presenting, that we ask questions so we 7 understand it. 8 And I think that there are some other proposed 9 edits that they have. We let them run through their whole 10 presentation, and we ask questions as we need to to 11 understand it. And then we circle back around, and we 12 talk about whether we as a Board want to consider trying 13 to implement some version of what we heard yesterday from 14 Tess. And if we decide we do, then I think we need to run 15 through point by point: I think this is the list of legal 16 and policy considerations that would have to be resolved, 17 and the policy considerations to our satisfaction and the 18 legal considerations certainly, I want to satisfy Frances 19 here. That's what we pay her for. I suggest we just run 20 on through, ask questions as we need to to understand, and 21 then circle back around and see how much we want to dig 22 into this. 23 MR. YOUNG: That's fine. So go ahead. 24 Frances had some more, I think, to address this 25 list.</p> <p style="text-align: right;">Page 56</p>
<p>1 That's the basic standard of every discharger in the State 2 is to comply with Water Quality Standards. 3 In the case of nonpoint source pollution, it's an 4 integrative process to do management practices and then 5 make them better. There's nothing in the Order that would 6 require them to be in compliance tomorrow. It's made very 7 clear. 8 MR. DELGADO: To the Chair, if I may. If she had 9 suggestions that you just said were workable that also 10 satisfy your needs and our needs, then why wouldn't we 11 take a look at those? 12 MS. McCHESNEY: That's what I said. I did look 13 at them. They would require significant rewrites because 14 she's introduced new issues. She's changed other things 15 in the Order in response to those changes. So it's not 16 just like one thing. It's like going to a whole bunch of 17 different places. Okay. Fix that, now go fix that, now 18 go fix that. If you want me to do that, I can do that. 19 I want to just tell you that I don't think it's 20 necessary to address the concern, and the language works 21 the way it is. So that's one of the legal issues. 22 MR. DELGADO: Okay. 23 MR. YOUNG: Mr. Johnston. 24 MR. JOHNSTON: Yes. Just a suggestion on 25 process, Mr. Chair. Because I know none of us want to be</p> <p style="text-align: right;">Page 55</p>	<p>1 MS. McCHESNEY: I talked about the other one. 2 That's the proposal to delete the provision of the Staff 3 report, the Staff proposal that they provide their farm 4 plans upon request to the Board, and they have proposed to 5 not allow that to happen. And I have already described my 6 legal concern with that, that it's undermining your own 7 authority to get technical reports submitted to the Board, 8 and that I would not recommend that. And the Central 9 Valley's Order has that, the current Order has that. I 10 don't see any need to delete. It would undermine your own 11 authority, which I don't recommend that you undermine your 12 own authority. 13 MR. YOUNG: Okay. Michael. 14 MR. JOHNSTON: So that's the second point, lacks 15 reporting requirements. 16 What about there cannot be a shield. Could you 17 just -- 18 MS. McCHESNEY: I think that there is a great 19 improvement with the newer version of the now Part E. And 20 as far as the role of the third party groups in clarifying 21 that individuals are ultimately responsible, there are 22 some areas that sort of create some ambiguity about that. 23 Under the Water Code, a person who discharges 24 waste is required to submit a Report of Waste Discharge, 25 or in this case, a Notice of Intent. And either obtain</p> <p style="text-align: right;">Page 57</p>

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<p>1 Waste Discharge Requirements or a Waiver of Waste 2 Discharge Requirements.</p> <p>3 It's the individual Discharger's responsibility 4 under the law to comply with the law. So you can't have a 5 third party group that shields the individual from the 6 compliance with the law. Some of the ways that it was 7 written in the previous version appeared to try to do 8 that. Which is somewhat surprising because I would think 9 the third party group would not want to be taking on the 10 responsibility that's really assigned to the individual 11 discharger. So that was a little interesting.</p> <p>12 I think the newer version does clarify some of 13 those things that the individual discharger is ultimately 14 responsible. But there are some areas that could be 15 clarified better. So that was my other concern.</p> <p>16 MR. YOUNG: Go ahead, Michael.</p> <p>17 MR. THOMAS: Our recommendation regarding this 18 new language, New Part E, is that -- and this is not our 19 final recommendation of the day. This is just the 20 recommendation regarding this particular language -- that 21 we cannot recommend adding -- I should have said Part E 22 there -- this language in the Order. We can't recommend 23 it for the reasons I said on the previous slide.</p> <p>24 However, we want to make it clear, if we haven't 25 made it clear before, that we encourage third party groups</p> <p style="text-align: right;">Page 58</p>	<p>1 the Board for years now. Key indicators of pollution 2 reduction and practice effectiveness, risk-based 3 prioritization criteria, milestones or targets within the 4 term of the Order so that we can demonstrate progress of 5 reducing pollution loading.</p> <p>6 We need to be responsive to the human health 7 threat. It's our highest priority. We cannot put 8 language into this Order that diminishes or undermines the 9 Board's authority -- diminishes that or undermines the 10 Board's authority. We need to focus on shallow 11 groundwater and targets or indicators of nitrate loading 12 reduction. We have to have advanced requirements for 13 higher risk. This is how the Board conducts its business 14 on every program that it implements. And the language or 15 the approach must be consistent with the law and policies, 16 or it's not defensible.</p> <p>17 We also need to include in our Order in order for 18 it to be effective an option to implement alternatives 19 that are equivalent or better than what we are proposing. 20 Because there are other options that are equivalent and 21 better than what we are proposing. And the industry can 22 develop those. So we have tried to make the Order as 23 flexible as we can. We tried to include language to 24 encourage and promote these alternatives. And we welcome 25 the industry's effort to do it.</p> <p style="text-align: right;">Page 60</p>
<p>1 to develop alternative implementation approaches with the 2 key elements on the previous slide. And we also think the 3 technical advisory committee is a good idea. That was 4 mentioned in the proposed language.</p> <p>5 The question that was asked yesterday --</p> <p>6 MR. YOUNG: Before you go, Mr. Jordan has a 7 question for clarification.</p> <p>8 MR. THOMAS: Yes.</p> <p>9 MR. JORDAN: Before you left that last page, I'm 10 curious, other than the legal items that Frances has 11 identified and the strict policy items that you've 12 identified, is everything else on that page or everything 13 on the prior cons page able to be folded into the existing 14 Order the way it's already written?</p> <p>15 MR. THOMAS: Yes.</p> <p>16 MR. JORDAN: Thank you.</p> <p>17 MR. THOMAS: That's where I was going.</p> <p>18 MR. JORDAN: Sorry.</p> <p>19 MR. THOMAS: That's a good question.</p> <p>20 The question that was asked yesterday, what is 21 the most effective Order to improve water quality and meet 22 legal standards. There's a typo. We were working on this 23 late.</p> <p>24 What's the answer? An Order that includes the 25 things that we've been talking about and emphasizing to</p> <p style="text-align: right;">Page 59</p>	<p>1 We currently have timelines in the Order. And 2 one of the edits that we are proposing that we'll get to 3 in a few minutes is to extend those deadlines that are in 4 the Order to further promote the development of these 5 third party alternatives that will be submitted to the 6 Executive Officer for approval.</p> <p>7 We want them. We want them to meet these 8 requirements. So we've designed the Order to do that. 9 And it's not unusual. Many of the Orders that this Board 10 adopts and has adopted over the past years -- over many 11 years includes this approach, where the Board establishes 12 requirements and says, or an alternative that is 13 equivalent or better, and allows the industry or the 14 responsible party to develop that. That is the most 15 effective Order that we can have, to set standards and 16 allow alternatives.</p> <p>17 If you want to see alternatives from third party 18 groups that meet the law and that have the conditions that 19 we've talked about, then adopting the Order with that 20 option is the way to go. Continuing to delay is going to 21 result in a continuation of what we have had over the past 22 three and a half years. We continue to argue about these 23 things. We continue to have opposing legal arguments and 24 we're stuck.</p> <p>25 Okay. Other edits.</p> <p style="text-align: right;">Page 61</p>

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<p>1 MR. YOUNG: Let me just say something. It's okay 2 to have opposing legal arguments. Ultimately the Board 3 needs to weigh those and decide where it wants to go with 4 that. 5 Right? 6 MR. THOMAS: Sure. It's okay to have opposing 7 legal arguments. I don't think it's okay for us to 8 continue to delay and not implement actions that protect 9 people that are threatened by this pollution. I don't 10 think that's okay. 11 MR. YOUNG: I understand that. Right. 12 MS. SCHROETER: Now I'm going to -- what Michael 13 put up here on the screen is a list of other edits that 14 Staff is recommending, and they also are reflected on your 15 yellow sheets. So I'm going to talk about them in detail. 16 MR. YOUNG: Angela, hold on one second. 17 Dr. Hunter, you want to quickly ask that 18 question? 19 MS. HUNTER: Okay. Thank you. 20 Again, I'm trying to track how the proposed new 21 Part E, which refers to and puts a lot of detail -- more 22 detail, as Michael said, from Attachment B. So that's an 23 improvement. 24 Where in the monitoring report section, which is 25 1, 2, and 3, do we see any kind of spelling out of how the</p> <p style="text-align: right;">Page 62</p>	<p>1 for Tier 2 on Page 9, it talks about cooperative 2 groundwater monitoring efforts to minimize costs. This is 3 A6, Page 9 of the Tier 2 Monitoring Program. 4 MR. JOHNSTON: Page 9 of what? 5 MR. BRIGGS: The monitoring and reporting program 6 for Tier 2. 7 MS. HUNTER: On Page 9, what number is it? 8 MR. BRIGGS: Number 6. 9 MS. HUNTER: Okay. I have found it. Thank you. 10 (Discussion held off the record.) 11 MS. HUNTER: Each tier Monitoring Program has 12 that same Number 6 apparently. 13 MR. DELGADO: On Page 9, Paragraph 6 in each 14 tier. 15 MR. JORDAN: Okay. 16 MS. HUNTER: Thank you. I just need to get my 17 bearings. 18 MS. SCHROETER: Now what you have in front of you 19 on the yellow sheet are four pages of additional edits 20 that Staff is suggesting based upon the information 21 submitted by Farmers For Water Quality as well as the 22 Board member discussion yesterday. 23 We already went through a page and a half of 24 them. I'm going to start on Page 2 where it says 25 Paragraph 58, Page 24 and 25. You'll notice on the one</p> <p style="text-align: right;">Page 64</p>
<p>1 third party process will work? Or do we have that? I'm 2 not seeing it. I just want to know: Do we have something 3 that's equivalent? 4 MS. McCANN: I don't think they proposed any 5 edits to the monitoring and reporting program. 6 MS. HUNTER: I know. 7 MS. McCANN: Okay. 8 MS. HUNTER: So let me ask that question a little 9 differently. 10 MS. McCANN: Okay. 11 MS. HUNTER: The only place that I see third 12 party referenced is in Additional Findings, Number 10. It 13 says it deals -- that's where you deal with third party 14 groups. And it refers to the Monitoring Program Orders. 15 That's why I was wondering: Is it in the Monitoring 16 Program Order, or is that the only place where you refer 17 to third party groups? 18 MS. McCANN: You're referring to our Draft Order? 19 MS. HUNTER: Yes. Correct. 20 MS. McCANN: Okay. 21 MR. JOHNSTON: Besides Condition 10, I think 22 Finding 11 refers to cooperative -- that's not monitoring. 23 Sorry. 24 MR. BRIGGS: Mr. Chairman, in Attachment 2B, 25 which is, for example, monitoring and reporting program</p> <p style="text-align: right;">Page 63</p>	<p>1 above Paragraph 56, we already discussed that one, about 2 the NOI form and the edits to the NOI form. 3 Paragraph 58 is the middle of Page 2, left-hand 4 column. 5 MR. YOUNG: Do you want the word "an" in front of 6 appropriate? 7 MS. SCHROETER: Yes. Sorry. 8 MS. McCHESNEY: "In the." 9 MS. SCHROETER: "In the appropriate tier." 10 MR. YOUNG: Right. 11 MS. SCHROETER: This one is for Dischargers who 12 do not provide adequate information for the Water Board to 13 confirm. The Executive Officer will place the farm ranch 14 in the appropriate tier based upon information submitted 15 in the Notice of Intent. And I'm bringing this one up 16 because this was left over from Tess' that we didn't 17 address. Her concern was that farmers would be 18 automatically placed on the higher tier. And we agree. 19 So we are suggesting additional edit that they would be 20 placed in the appropriate tier based upon the information 21 submitted in the Notice of Intent. 22 The second change, and this was in response to -- 23 MR. DELGADO: Excuse me, Angela. 24 MS. SCHROETER: Yes. 25 MR. DELGADO: To the Chair, back to that point, I</p> <p style="text-align: right;">Page 65</p>

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<p>1 think sometimes the Notice of Intent will be incomplete</p> <p>2 and not allow the Executive Officer based on that</p> <p>3 standalone document to make a determination. I mean,</p> <p>4 that's a possibility that I could foresee.</p> <p>5 If this would say, "Place the farm ranch in the</p> <p>6 appropriate tier based upon either information submitted</p> <p>7 in the Notice of Intent or further communication between</p> <p>8 the Executive Officer or Staff and the applicant, that</p> <p>9 that -- I think that would be more thorough.</p> <p>10 MS. SCHROETER: We could add that information,</p> <p>11 "or further communication with the grower regarding their</p> <p>12 enrollment."</p> <p>13 The next one is regarding the sampling of</p> <p>14 groundwater, individual groundwater sampling. And this</p> <p>15 actually is in response to a comment that was brought up</p> <p>16 by Board Member Wolff as a stakeholder. His concern was</p> <p>17 about the need to have registered professionals conducting</p> <p>18 the groundwater sampling. We do suggest a change. We</p> <p>19 understand that comment, and the change is that we would</p> <p>20 delete the sections that say, "State registered</p> <p>21 professional engineer, professional geologist, or other</p> <p>22 similarly qualified professional," and replace that with a</p> <p>23 qualified third party, for example, technician,</p> <p>24 consultant, or individual conducting cooperative</p> <p>25 monitoring.</p> <p style="text-align: right;">Page 66</p>	<p>1 get a clean sterilized jar from the lab, take it in a bag,</p> <p>2 go get my sample, fill out a label, and submit it, and</p> <p>3 that was okay.</p> <p>4 As long as you're going to be able to explain</p> <p>5 this to people, train them how to be able to do it</p> <p>6 themselves, with some training, they could become</p> <p>7 qualified.</p> <p>8 MR. JEFFRIES: It's also a cost savings.</p> <p>9 MR. YOUNG: It's a cost savings. And it makes it</p> <p>10 easier to do. So just consider that.</p> <p>11 MR. DELGADO: Okay.</p> <p>12 MS. SCHROETER: That's a good example.</p> <p>13 The second one relates specifically to the</p> <p>14 Farmers For Water Quality's suggestion about --</p> <p>15 clarification about the individual groundwater monitoring.</p> <p>16 Essentially we agreed with their suggested edits,</p> <p>17 which are in the underline here. The parts that we added</p> <p>18 are in that last sentence of the second paragraph, a</p> <p>19 strikeout, where it says, Qualifying cooperative</p> <p>20 groundwater monitoring and reporting programs may include</p> <p>21 but are not limited to regional or subregional groundwater</p> <p>22 programs developed for other purposes as long as the</p> <p>23 proposed cooperative groundwater Monitoring Program meets</p> <p>24 the Water Board's general purpose of characterizing</p> <p>25 groundwater quality. That's where Farmers For Water</p> <p style="text-align: right;">Page 68</p>
<p>1 So, for example, Preservation, Inc., currently</p> <p>2 conducts surface water cooperative monitoring. Someone</p> <p>3 like that would be fine to conduct the groundwater</p> <p>4 sampling, or a certified lab employee, for example.</p> <p>5 MR. DELGADO: Who would determine the</p> <p>6 qualifications necessary?</p> <p>7 MS. SCHROETER: Well, it's per the proper</p> <p>8 sampling methods and analytical. So someone who's</p> <p>9 qualified to do the sampling methods and --</p> <p>10 MR. DELGADO: Who determines that? I might get a</p> <p>11 lesson from you. And you and I might agree that I'm now</p> <p>12 qualified.</p> <p>13 Am I qualified?</p> <p>14 MS. SCHROETER: What we intended to do was to</p> <p>15 hold a workshop or provide some assistance for growers of</p> <p>16 how -- it states very specifically how to conduct the</p> <p>17 sampling in the MRP. We would have some assistance about</p> <p>18 that. And then as long as it was a third party familiar</p> <p>19 and who could implement those methods, it would be a</p> <p>20 qualified third party. It's deliberately flexible.</p> <p>21 MR. DELGADO: Okay.</p> <p>22 MR. YOUNG: Let me just offer some example here.</p> <p>23 When I used to grow oysters and I was taking</p> <p>24 water samples, the Department of Health Services showed me</p> <p>25 how to do it, and then I was responsible myself to go out,</p> <p style="text-align: right;">Page 67</p>	<p>1 Quality ended.</p> <p>2 What we'd like to do is to add because this</p> <p>3 wasn't in our original intent, "and ensuring the</p> <p>4 protection of drinking water sources."</p> <p>5 So that really is our general purpose of the</p> <p>6 individual groundwater monitoring is both to characterize</p> <p>7 groundwater quality and ensure the protection of drinking</p> <p>8 water sources. That's the add on.</p> <p>9 The other change that we made to the suggested</p> <p>10 edits -- oh, here. So on the third page, at the top of</p> <p>11 the page, where it says, Adequately characterize the</p> <p>12 groundwater aquifers in the local area of the</p> <p>13 participating Dischargers. We agree with that change to</p> <p>14 strike out represent and add the word characterize.</p> <p>15 Ms. Dunham had also suggested that we strike out,</p> <p>16 "characterize the groundwater quality of the uppermost</p> <p>17 aquifer." Staff disagrees with that strikeout. We feel</p> <p>18 it's very important for any cooperative groundwater</p> <p>19 Monitoring Program to also access the uppermost aquifer.</p> <p>20 It's the most vulnerable to pollution. It's the aquifer</p> <p>21 that most domestic wells are tapped into and any</p> <p>22 cooperative groundwater Monitoring Program must include</p> <p>23 that evaluation.</p> <p>24 Other than that, we agree with all of the other</p> <p>25 suggested edits, including the ones which gives them time</p> <p style="text-align: right;">Page 69</p>

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<p>1 here to submit the cooperative groundwater monitoring 2 proposal. So you will see that they have -- someone who 3 wanted to do it cooperatively has a year to submit the 4 proposal. That's acceptable to Staff. 5 So the next suggested edit is the one that 6 Michael specifically referenced. And that relates to the 7 dates regarding individual discharge monitoring. So we 8 understand that any cooperative effort, third party 9 effort, is going to require time. So we want to be able 10 to provide that time before some of the more burdensome 11 requirements kick in. 12 For example, for individual sampling analysis 13 plan, we would like to revise that date to submit to be 14 one year, March 15th, 2014, instead of the previous date 15 which was six months after adoption. 16 In addition, we also are suggesting the edit to 17 revise the date to initiate the individual discharge 18 monitoring, surface discharge monitoring to be 19 October 1st, 2013. So this extends individual to surface 20 discharge monitoring 1.5 years. The previous date was 21 October 1, 2012. 22 MR. BRIGGS: Angela, back up one. Is that the 23 right date there? Because it looks like you mean to say 24 2013. 25 MR. JEFFRIES: That's what I thought. You have Page 70</p>	<p>1 individual discharge monitoring for surface water, the 2 date to submit the plan would be March 15th, 2013. The 3 date to start sampling would be October 1st, 2013. And 4 the date to submit any reporting would be March 15, 2014, 5 two years after today. 6 In addition Staff is also recommending to delete 7 the date of implementation for the irrigation nutrient 8 management plan to allow for the flexibility of 9 considering alternatives before the development of that 10 plan. The previous date was October 1, 2013. We would 11 just suggest -- 12 MR. DELGADO: So you'd leave it open-ended, no 13 date? 14 MS. SCHROETER: Leave that one open-ended with no 15 date. 16 They development and implement that plan at their 17 discretion; however, the next one is regarding the 18 reporting of the elements of the irrigation issue 19 management plan. So here we're suggesting to move the 20 date for reporting the elements of the irrigation issue 21 management plan by one year. 22 Currently it's October 1, 2014, and it would move 23 to October 1, 2015. That previous date notation there is 24 wrong in the note. 25 So those are the suggested edits that relate to Page 72</p>
<p>1 March 15, 2014. 2 MS. SCHROETER: Oh, I'm sorry. Yes, you're 3 correct. Thank you for catching that important 4 clarification. 5 MR. BRIGGS: So that's the first date change that 6 Angela was talking about. 7 MS. SCHROETER: Submit the individual sampling 8 analysis plan. 9 MR. BRIGGS: Right. Revise date to submit 10 individual sampling analysis plan to March 15th, 2013 as 11 consistent with the one year from today. 12 MR. DELGADO: That is a six-month extension 13 compared to the status quo? 14 MS. SCHROETER: That's correct. That is to 15 submit the plan. And an additional extension for actually 16 initiating the sampling, which is the next one. 17 So in addition, we're also revising dates to 18 submit or to report the individual surface water discharge 19 monitoring to March 15th, 2014. The previous date was 20 October 1, 2013. So this basically provides two years to 21 submit the data. So it allows growers two years to 22 consider and implement -- start implementing alternative 23 before they have to report any individual discharge 24 monitoring data. 25 In summary for those three, they all relate to Page 71</p>	<p>1 dates. All those dates were extended out to allow for the 2 opportunity for the development of alternatives, third 3 party groups, or certifications, cooperative efforts. 4 We also are suggesting some additional edits in 5 response to the hearing discussion yesterday. The next 6 one relates to the nutrient balance ratios as a target 7 versus a milestone. In response to the discussion 8 yesterday, Staff is suggesting that we go ahead and make 9 the nitrogen balance ratio a milestone and not a 10 compliance condition. 11 So the edit, then, is by October 1, 2015, 12 Dischargers with high nitrate loading risk must report the 13 progress towards the following nitrogen balance ratio 14 milestones, instead of must achieve the milestones. They 15 have to still report the ratio at a certain date. But 16 it's moving to a milestone instead of a compliance 17 condition. 18 MR. DELGADO: When you say report progress 19 towards, that means any amount of positive numeric 20 progress? 21 MS. SCHROETER: That's correct. Then the next 22 edit would be moving the conditions to achieve nitrogen 23 balance ratio to the specific table. So they go from the 24 compliance conditions table to Table 4. 25 What Table 4 states in the Order is that these Page 73</p>

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<p>1 milestones will be used to evaluate progress towards water 2 quality improvement. That milestone is still how we're 3 going to measure progress. But it's not a compliance 4 condition to achieve it.</p> <p>5 MR. DELGADO: Is it accurate to say that targets 6 are requirements and milestones are suggestions? Because 7 it seems like now we're saying here's the difference 8 between targets and milestones; whereas, earlier they were 9 interchangeable words.</p> <p>10 MR. BRIGGS: Mr. Chair.</p> <p>11 MR. YOUNG: Yes.</p> <p>12 MR. BRIGGS: I think the key thing is not so much 13 the word target but be consistent with Table 4 which we 14 call milestones as opposed to meet targets. And that 15 applies -- in the heading of the table I think was 16 compliance. So you put all that together.</p> <p>17 MR. DELGADO: Okay. But for the purpose of 18 understanding this on the part of the growers especially, 19 it would be nice if they knew the difference. Because we 20 knew the difference between targets and milestones. So if 21 there is a policy difference, it would be nice to know 22 that consistent policy difference.</p> <p>23 MR. JEFFRIES: What you're inferring is that the 24 language of milestones be consistent throughout the Order? 25 It means the same thing?</p> <p style="text-align: right;">Page 74</p>	<p>1 to be an enforceable requirement. If they don't show 2 progress, they're not going to be hit with enforcements. 3 It's just, Okay. Now you need to look at more what you 4 can do to show improvements.</p> <p>5 Right?</p> <p>6 MR. DELGADO: So then are targets enforceable?</p> <p>7 MS. McCHESNEY: Target was only the word used for 8 that thing, and there's no other use of the word target. 9 So it goes away.</p> <p>10 MR. DELGADO: In the Ag Order and the associated 11 MRP, target comes up in one instance. And in that 12 instance, it's enforceable. But otherwise target's not 13 used, instead milestones are used.</p> <p>14 MS. McCHESNEY: That was -- because you said 15 yesterday that was the only -- the nitrogen target was the 16 only enforceable thing, if that's a word.</p> <p>17 MR. JOHNSTON: I think it was enforceable part -- 18 the implication I got was -- it was in a table labeled 19 Conditions.</p> <p>20 MS. McCHESNEY: Right.</p> <p>21 MR. JOHNSTON: And we have moved it from a table 22 labeled Conditions to a table labeled Milestones and said 23 it will be -- we've stated specifically that you're 24 required to -- excuse me. We said specifically that you 25 must report progress in the direction of that.</p> <p style="text-align: right;">Page 76</p>
<p>1 MR. DELGADO: Sort of. If there is a difference, 2 let's say that targets were things that had to be met to 3 be complaint, but milestones were time frames that were 4 more wishy washy. Or if there was any other consistent 5 difference, it's just important to me that the growers are 6 able to understand.</p> <p>7 MR. JEFFRIES: I understand and I appreciate 8 that. And this statement earlier in the presentation 9 that -- at least I understood -- that targets and 10 milestones were interchangeable by the Staff and 11 interpretation. Is that correct?</p> <p>12 MS. McCANN: Maybe we need to clarify something. 13 This is the only indicator -- or place where we 14 use the term target. It's a descriptor for this thing 15 called the nutrient balance ratio. And we want it to be a 16 milestone. First it's a condition.</p> <p>17 MS. McCHESNEY: I think I can explain it. The 18 difference is is that in Table 3, this is a time schedule, 19 for example, submit your photo monitoring. So that's a 20 specific date. So if they submit it on that date, by that 21 date, they're in compliance. They wouldn't be subject to 22 enforcement. Those compliance dates, the way I understand 23 it, is that they're clearly enforceable dates. Where the 24 milestone is, This is information provided to the Board so 25 they can see if progress is being made, but it's not going</p> <p style="text-align: right;">Page 75</p>	<p>1 MS. McCHESNEY: Right.</p> <p>2 MR. JOHNSTON: So we've moved it from being a 3 condition you have to meet to something you have to 4 progress towards.</p> <p>5 MS. McCHESNEY: Right. And so you -- before -- I 6 mean, the way it was originally proposed, if you didn't 7 meet that 1 or 1.2 or other alternative that was approved 8 by that date, you would be out of compliance.</p> <p>9 Right?</p> <p>10 MS. SCHROETER: That's correct.</p> <p>11 And actually Roger said it simply before that.</p> <p>12 The only reason to change the wording from target to 13 milestone is that it was going to the milestone table, 14 otherwise there wasn't really a distinction. It's 15 compliance condition versus a milestone.</p> <p>16 MR. DELGADO: So just to beat a dead horse, then, 17 there's no longer the word target in any of the papers 18 before us as far as something you have to meet?</p> <p>19 MS. SCHROETER: Right.</p> <p>20 MR. DELGADO: Okay.</p> <p>21 MS. SCHROETER: That's what we intend.</p> <p>22 MR. BRIGGS: As long as you go to the next 23 change, which is to make the monitoring reporting program 24 for Tier 3 consistent.</p> <p>25 MS. SCHROETER: Right. There's the use of the</p> <p style="text-align: right;">Page 77</p>

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<p>1 word target. It's the same change. It just isn't in the</p> <p>2 MRP.</p> <p>3 So that brings me to our last edit. And that is,</p> <p>4 again -- we already started discussing this one -- that's</p> <p>5 in response to Mr. Sanchez's comment about his concerns</p> <p>6 related to small disadvantaged growers, especially those</p> <p>7 that may be non-English speaking.</p> <p>8 We agree. We would like to prioritize those</p> <p>9 types of growers for assistance, and we would like to</p> <p>10 actually add a finding to the Order that states, The</p> <p>11 Central Coast Water Board recognizes that certain</p> <p>12 disadvantaged farmers may have difficulties to achieve</p> <p>13 compliance with this Order.</p> <p>14 The Central Coast Water Board will prioritize</p> <p>15 assistance for these farmers, including but not limited to</p> <p>16 technical assistance, grant opportunities, and necessary</p> <p>17 flexibility to achieve compliance with this Order, (e.g.),</p> <p>18 adjusted monitoring reporting or time schedules.</p> <p>19 So if that issue comes up, that's how we would</p> <p>20 handle it. And actually the USDA has a definition for</p> <p>21 growers called the limited resource farmer definition.</p> <p>22 And those are the types of farmers that they prioritize</p> <p>23 for assistance for equip funds and other types of grant</p> <p>24 opportunities.</p> <p>25 MR. JEFFRIES: Angela, how is a disadvantaged</p> <p style="text-align: right;">Page 78</p>	<p>1 MS. SCHROETER: They have been. Monica can</p> <p>2 correct me if I'm wrong, but I think those have been the</p> <p>3 most well attended is with those grower groups.</p> <p>4 MR. YOUNG: Has anyone called to speak to our</p> <p>5 Spanish-speaking Staff?</p> <p>6 MS. SCHROETER: Yes, all the time.</p> <p>7 MR. JEFFRIES: I'm sure there's going to be some</p> <p>8 of those folks who are going to fall through the cracks.</p> <p>9 And I think that's some of the folks that Mr. Sanchez was</p> <p>10 referring to that are afraid to step forward for one</p> <p>11 reason or another and to ask or even inquire what they're</p> <p>12 supposed to do.</p> <p>13 So that's -- and I don't want to speak for him,</p> <p>14 but that's what I took from some of his comments, that</p> <p>15 there's folks out there that are farming, whatever type of</p> <p>16 farming they're doing, haven't attended any of these</p> <p>17 workshops. And now they're afraid that there's going to</p> <p>18 be some Order which means some kind of liability to them,</p> <p>19 and that they don't understand.</p> <p>20 Is the form also in Spanish and Chinese.</p> <p>21 MS. SCHROETER: All of our electronic Notice of</p> <p>22 Intent forms are all in Spanish. They've all been</p> <p>23 distributed to the commodity groups, where there are</p> <p>24 Spanish-speaking growers that we know of. For example,</p> <p>25 the Alba Group. That's just one example as well as the</p> <p style="text-align: right;">Page 80</p>
<p>1 farmer going to be able to interpret this if they're</p> <p>2 non-English speaking?</p> <p>3 MS. SCHROETER: We have increased our efforts to</p> <p>4 conduct outreach with the non-English speaking community</p> <p>5 of growers. Our latest example of doing that is working</p> <p>6 with the Chinese chrysanthemum speakers. So we're really</p> <p>7 trying to coordinate with commodity groups to identify</p> <p>8 where that need is. That's actually an example of</p> <p>9 success. We've increased enrollment in that segment of</p> <p>10 the agriculture industry where it was not there before.</p> <p>11 MR. YOUNG: How about for Spanish speakers?</p> <p>12 I understand that.</p> <p>13 I just want to know what mechanism do you have</p> <p>14 right now in place should a Spanish-speaking farmer call</p> <p>15 the Board to get some help or direction? Is there someone</p> <p>16 that --</p> <p>17 MS. SCHROETER: Right now we have two full-time</p> <p>18 Staff who are Spanish speaking who are actually in the Ag</p> <p>19 program. It is standard now for all of our letters to</p> <p>20 have the language on top of the letter that states, "If</p> <p>21 you need Spanish translation or Spanish assistance to call</p> <p>22 the numbers of those Staff. We've also held I think three</p> <p>23 or four Spanish-speaking workshops throughout the region</p> <p>24 north and south.</p> <p>25 MR. YOUNG: Have they been attended.</p> <p style="text-align: right;">Page 79</p>	<p>1 local farm bureaus. For example, the Cachuma RCD, we've</p> <p>2 worked with them to distribute our documents in Spanish.</p> <p>3 We hear the concern, and our intent is to provide a higher</p> <p>4 level of assistance and prioritize assistance for those</p> <p>5 farmers.</p> <p>6 MR. JEFFRIES: I realize that we can't cover all</p> <p>7 bases. But eventually I'm sure we'll discover those folks</p> <p>8 as they --</p> <p>9 MR. YOUNG: As they pop up.</p> <p>10 MR. JEFFRIES: -- as they pop up.</p> <p>11 MS. SCHROETER: Many of them are already</p> <p>12 enrolled. So I don't want to leave you with the</p> <p>13 impression that those types of groups are</p> <p>14 under-represented. They actually are very well</p> <p>15 represented. I'm sure that we don't have all of them.</p> <p>16 But they check a box on the Notice of Intent which states</p> <p>17 what language is their speaking preference, and there are</p> <p>18 many non-English speaking growers.</p> <p>19 MR. YOUNG: Mr. Delgado.</p> <p>20 MR. DELGADO: Yes.</p> <p>21 I thought I heard you say that the USDA</p> <p>22 definition is for something slightly differently worded</p> <p>23 than disadvantaged farmers. If that's true, why don't we</p> <p>24 call it what they call it. Dollars.</p> <p>25 MS. SCHROETER: That was a lay edit. We were</p> <p style="text-align: right;">Page 81</p>

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<p>1 trying to find the actual language. That was my recalling</p> <p>2 of what a definition was. But yes, you're --</p> <p>3 MR. DELGADO: So what were those two words</p> <p>4 instead of disadvantaged farmers?</p> <p>5 MS. SCHROETER: It's called limit resource</p> <p>6 farmer.</p> <p>7 MR. DELGADO: Limited resource farmer, CUSDA</p> <p>8 definition. Is that your preferred language at this</p> <p>9 point.</p> <p>10 MS. SCHROETER: That was just a reminder to me to</p> <p>11 look at that definition so we can strike out the CUSDA.</p> <p>12 MR. DELGADO: I like the CUSDA definition because</p> <p>13 then everybody knows that it exists.</p> <p>14 MS. SCHROETER: Okay. Perfect.</p> <p>15 MR. DELGADO: And then my other question on this</p> <p>16 was, if I was a Caucasian grower, I might feel slighted</p> <p>17 that grants and technical assistance opportunities would</p> <p>18 be prioritized for somebody else. I just want to make</p> <p>19 sure that that's both legal and fair in your mind.</p> <p>20 MS. SCHROETER: Actually it was very difficult</p> <p>21 for us to articulate what disadvantaged means, which is</p> <p>22 why we are relying upon an existing definition. The</p> <p>23 existing definition actually doesn't specify language,</p> <p>24 ethnicity, anything like that. It's based upon the</p> <p>25 standard practice of looking at median household income</p> <p style="text-align: right;">Page 82</p>	<p>1 is set aside for people that are in a lower socioeconomic</p> <p>2 status than I?</p> <p>3 MS. McCHESNEY: Correct. That's what it appears,</p> <p>4 yeah.</p> <p>5 MR. YOUNG: Mr. Jordan.</p> <p>6 MR. JORDAN: Actually I want to back up a couple</p> <p>7 squares if everybody's done with that subject.</p> <p>8 MR. YOUNG: Okay.</p> <p>9 MR. JORDAN: Angela, could you tell me quickly,</p> <p>10 going back up to the top on the nitrate dates changes.</p> <p>11 Just a couple sentences. What the difference is between</p> <p>12 developing irrigation and nutrients management program and</p> <p>13 submitting the elements? What does that mean?</p> <p>14 MS. SCHROETER: We require them to develop a</p> <p>15 plan.</p> <p>16 MR. JORDAN: Right.</p> <p>17 MS. SCHROETER: The irrigation management plan,</p> <p>18 and we also require them to report specific elements.</p> <p>19 MR. JORDAN: You're proposing, then, to eliminate</p> <p>20 the first part of that and just give them a window to</p> <p>21 submit; right?</p> <p>22 MS. SCHROETER: What we are proposing to do is to</p> <p>23 eliminate the date specified for developing the plan.</p> <p>24 They still have to develop the plan.</p> <p>25 MR. JORDAN: Correct.</p> <p style="text-align: right;">Page 84</p>
<p>1 and other indicators.</p> <p>2 MR. BRIGGS: Needs based.</p> <p>3 MS. SCHROETER: Needs based.</p> <p>4 MS. McCHESNEY: Right. And it specifically says</p> <p>5 that they can't discriminate based on race, color, nation</p> <p>6 of origin, all that stuff.</p> <p>7 MR. DELGADO: But they can discriminate in a way</p> <p>8 based upon socioeconomic status. That's -- what you're</p> <p>9 telling us is legal?</p> <p>10 MS. McCHESNEY: The IACT authorizes the secretary</p> <p>11 to set aside five percent of available equipped funds and</p> <p>12 CSB acres for socially disadvantaged farmers or ranchers.</p> <p>13 MR. YOUNG: Speak up.</p> <p>14 MR. DELGADO: Socialize disadvantaged. So those</p> <p>15 are different words than --</p> <p>16 MS. McCHESNEY: The beginning of it refers to</p> <p>17 limited resource farmers or ranchers. I mean, it's a</p> <p>18 federal law that deals with limited resource farmers or</p> <p>19 ranchers and then provides a certain percentage of funds</p> <p>20 for a certain limited resource and beginning farmers or</p> <p>21 ranchers, et cetera.</p> <p>22 MR. DELGADO: Okay. That sounds more fair. If I</p> <p>23 was a higher income ranch grower that was having trouble</p> <p>24 implementing this, that there might be 95 percent of the</p> <p>25 money still available for people like me and five percent</p> <p style="text-align: right;">Page 83</p>	<p>1 MS. SCHROETER: Right.</p> <p>2 MR. JORDAN: There's just no intermediary</p> <p>3 milestone timeline target.</p> <p>4 MS. SCHROETER: That's correct. It provides full</p> <p>5 flexibility as to when to develop that plan.</p> <p>6 MR. JORDAN: That only applies to a subset of</p> <p>7 Tier 3; right?</p> <p>8 MS. SCHROETER: That's correct. It only would</p> <p>9 apply to a subset of the Tier 3 farms, approximately, if I</p> <p>10 can recall from yesterday, 61.</p> <p>11 MR. JORDAN: That subset was developed</p> <p>12 specifically to recognize a higher risk even within</p> <p>13 Tier 3; correct?</p> <p>14 MS. SCHROETER: That is correct.</p> <p>15 MR. JORDAN: It seems like a significant</p> <p>16 giveback. I'm wondering what discussions took place on</p> <p>17 that issue.</p> <p>18 MS. SCHROETER: It is a very significant</p> <p>19 compromise, correct.</p> <p>20 MR. JORDAN: Would you like to share any</p> <p>21 discussions that were -- well, here's my point, then you</p> <p>22 can decide. If Staff is willing to give that back, okay.</p> <p>23 But the particular line where it talks about the strikeout</p> <p>24 of must meet and is replaced with must report progress</p> <p>25 towards, that, to me, is a historical line that should be</p> <p style="text-align: right;">Page 85</p>

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<p>1 remembered in three years when you start to work on the</p> <p>2 next Order. Because that's indicative right there that if</p> <p>3 conditions continue to worsen that that was clearly a</p> <p>4 point of giveback for consideration at this point. And</p> <p>5 that it could have been worse at this time.</p> <p>6 Does that make sense? Or it could have been more</p> <p>7 stringent at this time? Worse is probably not the right</p> <p>8 word.</p> <p>9 MR. THOMAS: It does, yes. I agree. The</p> <p>10 conversation that we had about it, we go round and round</p> <p>11 about whether we should or shouldn't reduce these</p> <p>12 requirements further or extend these due dates further.</p> <p>13 And in the interest of promoting this coalition effort, we</p> <p>14 said what can we change in the Order that would promote it</p> <p>15 and would allow for opportunity and time for people to do</p> <p>16 that.</p> <p>17 We didn't want to -- correct me if I'm wrong</p> <p>18 here, Angela. We didn't want to set up a situation where</p> <p>19 people were trying to do both, working on the requirements</p> <p>20 in the Order and trying to set up a coalition or trying to</p> <p>21 meet requirements of a coalition at the same time. So we</p> <p>22 wanted to give space to develop that coalition process.</p> <p>23 MR. JORDAN: It seems to me to be a huge carrot</p> <p>24 you're dangling out there. Obviously we went by it really</p> <p>25 quick, and I'm surprised that nobody had any opinions on</p> <p style="text-align: right;">Page 86</p>	<p>1 I have a couple of minor things I'd like to run</p> <p>2 by Staff that came out of comments. And I don't have</p> <p>3 something printed on this, but it's pretty simple. This</p> <p>4 first one, in the Order on Page 7, Paragraph 27. I had it</p> <p>5 a minute ago. The way that paragraph reads right now,</p> <p>6 Landowners and operators of irrigated lands who obtain a</p> <p>7 pesticide use permit from a local County agricultural</p> <p>8 commissioner may have a discharge of waste that could</p> <p>9 affect surface water and groundwater and therefore must</p> <p>10 submit to the Central Coast Water Board a completed</p> <p>11 electronic Notice of Intent to comply with the conditions</p> <p>12 of this Order to comply with the Water Code.</p> <p>13 What that basically says is, if you obtain a</p> <p>14 pesticide use permit, whether there's any surface water or</p> <p>15 even whether you're irrigating or not, you must file a</p> <p>16 Notice of Intent. It seems like -- here's my proposed</p> <p>17 changes to that. I just want you guys to consider -- if</p> <p>18 you need to talk about them when you're talking with the</p> <p>19 Executive Officer, that's fine.</p> <p>20 MR. YOUNG: Hold on. I think before you get to</p> <p>21 there, this is conditioned upon it being irrigated lands,</p> <p>22 which would mean that someone has to be irrigating Ag.</p> <p>23 MR. JOHNSTON: Correct.</p> <p>24 MR. YOUNG: That's a precondition.</p> <p>25 MR. JOHNSTON: Let me just tell you what my</p> <p style="text-align: right;">Page 88</p>
<p>1 it. But it would also seem to put the ball in the other</p> <p>2 party's court, and they better do something with that ball</p> <p>3 that leads to results or else the next time you look at</p> <p>4 this, the language reverts back to a more stringent</p> <p>5 language. Just my two cents.</p> <p>6 MR. YOUNG: What more does Staff have for us?</p> <p>7 MS. SCHROETER: Those are all of the suggested</p> <p>8 changes and some other discussion.</p> <p>9 MR. YOUNG: Okay. Any other rebuttal for Staff?</p> <p>10 Any other comments to us on anything else you've heard?</p> <p>11 MR. THOMAS: There were other issues that came up</p> <p>12 yesterday. So what we would -- instead of -- let me back</p> <p>13 up here. So instead of going into the issues that came up</p> <p>14 and rebutting, we're willing to just let it go and go to</p> <p>15 our final recommendation.</p> <p>16 I would request, though, that we be allowed to --</p> <p>17 if we could take a 5- or 10-minute break so we can talk to</p> <p>18 the Executive Officer and formulate our final</p> <p>19 recommendation.</p> <p>20 MR. YOUNG: Okay. Mr. Johnston.</p> <p>21 MR. JOHNSTON: Before we do that and presumably</p> <p>22 after the final recommendation, we're going to circle back</p> <p>23 around and talk about as a policy, as well as a legal</p> <p>24 matter, if and how we want to approach the stuff that was</p> <p>25 given to us yesterday.</p> <p style="text-align: right;">Page 87</p>	<p>1 proposed change and Staff can talk about it and they can</p> <p>2 see what they think. I want to remove the word "may" in</p> <p>3 the second line after agricultural commissioner and add</p> <p>4 the words "and that." I want to -- after surface water</p> <p>5 and before groundwater -- replace the word "and" with the</p> <p>6 word "or" and strike the words "and therefore."</p> <p>7 Then it would read, Landowners and operators of</p> <p>8 irrigated lands who obtain a pesticide use permit from a</p> <p>9 County agricultural commissioner and that have a discharge</p> <p>10 of waste that could affect surface water or groundwater</p> <p>11 must submit to the Central Coast Water Board a completed</p> <p>12 Notice of Intent, yada, yada, yada. Talk about that.</p> <p>13 The second thing that was raised in comments</p> <p>14 yesterday and that I didn't hear a response to and I would</p> <p>15 just like to get Staffs' take on it. It was raised in</p> <p>16 comments that some piece of the -- I believe it's the</p> <p>17 irrigation plan has to be prepared by a certified crop</p> <p>18 advisor with a certificate in hydrology. There was a</p> <p>19 certified crop advisor who spoke and said, "You know,</p> <p>20 that's a really high bar and almost nobody has that."</p> <p>21 MR. THOMAS: It's gone.</p> <p>22 MR. JOHNSTON: Oh, it's gone?</p> <p>23 MR. YOUNG: Yeah.</p> <p>24 MR. JOHNSTON: Okay. Thank you.</p> <p>25 MR. JEFFRIES: It was stricken.</p> <p style="text-align: right;">Page 89</p>

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<p>1 MR. THOMAS: We said earlier that we were 2 removing it. 3 MR. JOHNSTON: I missed that. 4 MS. SCHROETER: Actually, you're correct. We 5 heard that also and intended to strike that. We intended 6 to strike it with the one about collecting groundwater 7 samples. We did that one, but we had intended to strike 8 out the language also that said CCA with a hydrology 9 certificate. 10 MR. JOHNSTON: Okay. Thank you. 11 MR. BRIGGS: One more thing, Mr. Chair. 12 MR. YOUNG: Yes. 13 MR. BRIGGS: You should also mention that in the 14 original Staff report, we recommended changes which had to 15 do with -- mostly administrative. Had to do with the fact 16 that the hearing has been delayed, so it changed a lot of 17 dates. Some of those may be superceded by changes you 18 just went over. And then didn't we have another 19 supplemental sheet? 20 MS. McCHESNEY: Yes. 21 MR. BRIGGS: I mean the one besides -- 22 MR. DELGADO: Chair, I have a small request for 23 an edit. 24 MR. YOUNG: A what? 25 MR. DELGADO: A small request for an edit.</p> <p style="text-align: right;">Page 90</p>	<p>1 MR. BRIGGS: I think we can share here. 2 MR. JEFFRIES: I don't have one. 3 MS. McCHESNEY: Here, you can take mine. If you 4 need a copy, make a copy. 5 MR. BRIGGS: I just want to make sure we've got 6 all the pieces. 7 Okay, Mr. Chair. 8 MR. YOUNG: What's the question that's pending? 9 MS. McCHESNEY: Bruce had a question. 10 MR. DELGADO: Mine was in the additional findings 11 that is Attachment 1B on Page 6, finding Number 20, 12 regarding NPS policy. It's actually 1B, Page 6, the 20th 13 additional finding. 14 MR. YOUNG: What's the edit change? 15 MR. DELGADO: It has the words, "never may." So 16 the sentence reads, Management practice implementation 17 never may be a substitute for meeting water quality 18 requirements. 19 MS. McCHESNEY: Instead of may never. 20 MR. DELGADO: Instead of may never, or I would 21 prefer it to say is not necessarily a substitute for 22 meeting quality water requirements. 23 MS. McCHESNEY: And the language is from the Non 24 Point Source Policy, but I don't think it's an exact 25 quote. So I would recommend that we say what's in the Non</p> <p style="text-align: right;">Page 92</p>
<p>1 MR. BRIGGS: Before we do that, though, let's 2 just -- I want to make sure that -- 3 MS. McCHESNEY: Here it is. 4 MR. BRIGGS: Yes, this one. 5 MR. YOUNG: Prepared March 6th. 6 MR. BRIGGS: Have you got that handy? 7 MS. SCHROETER: I don't have it with me. It 8 should be in the Board member folders. 9 MR. YOUNG: It is. 10 MS. McCHESNEY: It's in our blue folders. 11 MR. DELGADO: Was the subject the minutes? 12 MR. JOHNSTON: Is it yellow? 13 MR. YOUNG: Yes. 14 MS. HUNTER: Was it Item Number 8? 15 MR. YOUNG: No, Item Number Four. It's a single 16 page. 17 MR. DELGADO: So proposed revisions. Is that the 18 one? 19 MR. YOUNG: Yes. 20 MR. DELGADO: Page 6 and 12? 21 It was in our little blue Peechee folder. 22 MR. BRIGGS: It may have gotten lost in the 23 shuffle. 24 MR. THOMAS: Does anyone need a copy? 25 MR. JOHNSTON: I need a copy.</p> <p style="text-align: right;">Page 91</p>	<p>1 Point Source Policy so I can check what it actually says 2 to make sure it's an accurate -- I don't think it says 3 "never may," so I'll -- 4 MR. DELGADO: It could say may never, or it could 5 say something else. 6 MS. McCHESNEY: Right. So I'll check it. 7 MR. DELGADO: Thank you. 8 MR. YOUNG: We're going to take a break, right, 9 for about 10 minutes? 10 (Recess taken.) 11 MR. YOUNG: Okay, folks. We're going to resume 12 our meeting. 13 We are at the point where we heard from Staff. 14 And the Board is now at the point where it can begin to 15 deliberate. 16 MS. McCHESNEY: No. Recommendations, Roger's. 17 MR. JORDAN: Roger's got something. 18 MR. JOHNSTON: All roads lead to Roger. 19 MR. YOUNG: Yes. But -- and actually before 20 that -- 21 MR. JORDAN: You mean comments from the Board 22 members? 23 MR. YOUNG: Comments from Board members, is what 24 I meant. We're at the point where it's in the Board's 25 hands. We're still going to hear from Roger on any kind</p> <p style="text-align: right;">Page 93</p>

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<p>1 of final recommendation before we actually consider what 2 to do. 3 But, Mr. Johnston, did you have anything at this 4 point? I thought maybe, or not, or wait -- 5 MR. JOHNSTON: I gather you're aware, 6 Mr. Chairman, because it was shared with you, although 7 none of the other Board members, is I have worked with the 8 Executive Officer and counsel over the last week or two on 9 a couple of different pieces of language. And the 10 principal stuff in there is -- well, three different 11 things, really. 12 One of them deals with a coalition monitoring of 13 groundwater. And the other two deal with setting up a 14 little more defined process for third party groups to come 15 to make proposals to the Executive Officer and a technical 16 advisory committee to review and make recommendations on 17 the acceptability of those proposals. 18 And my thought on that language, frankly, is that 19 we, as a Board, should decide which of two roads we want 20 to go down. And one road is to work -- to look at the 21 stuff that Ag presented yesterday. And to take point by 22 point by point each of the policy issues on Staffs' con 23 slide. And each of the legal issues on that slide. And 24 resolve them, modify the Ag Order -- excuse me -- the Ag 25 Alternative that was proposed yesterday. And see if we</p> <p style="text-align: right;">Page 94</p>	<p>1 Board -- I think -- 2 MR. YOUNG: Let's put those up, if we can, since 3 we're talking about, those cons. 4 MR. JOHNSTON: Put the cons up? 5 MR. YOUNG: Put the cons up so we've got 6 something to look at. 7 (Discussion held off the record.) 8 MR. JOHNSTON: I suspect -- I don't want to speak 9 for anyone else on this Board -- 10 MR. YOUNG: Right. 11 MR. JOHNSTON: -- but I suspect that there would 12 be general consensus on the pros that are up on the slide 13 that we're looking at right now. That there certainly are 14 some advantages to the ideas however un-fleshed out they 15 are. And whatever failings they may have, either in 16 policy terms or in legal terms, that there are some 17 advantages to the pros on here and those ideas. 18 And I think that the question that we as a Board 19 face is -- I suspect there's general consensus on that on 20 this Board. That's just my sense from our -- from our 21 public discussion. 22 I think the question we as a Board face is: 23 What's the best way to capture those pros in an Order that 24 we can pass. And one alternative is to -- I'm not saying 25 this would involve rejecting the edits that Staff has</p> <p style="text-align: right;">Page 96</p>
<p>1 can come up with something that we wish to adopt. And I 2 think if we're not interested in doing that and instead we 3 want to simply kick down the road to the Executive Officer 4 and a technical advisory committee the question of the 5 details of how third party alternatives would work, then I 6 would propose that language. 7 But I think, at least in the way I'm looking at 8 it, kind of the first step would be for us as a Board 9 to -- I guess polling ourselves or something to decide how 10 much interest there is in trying to work through what Ag 11 proposed and use it as a base. I want to come out with an 12 Order today no matter what. I don't -- 13 MR. YOUNG: Right. The question you're posing is 14 for each of us to respond to are the changes Staff has 15 just given us in response to Tess Dunham's presentation 16 acceptable as a path to go down, or would you prefer that 17 we go back and revisit the cons and try to take each of 18 those and tweak the Ag Alternative to meet -- no. 19 MR. JOHNSTON: I wouldn't put the question quite 20 that way. 21 MR. YOUNG: Okay. 22 MR. JOHNSTON: I think the changes that Staff has 23 proposed sort of stand on their own. And most, if not 24 all, of them actually made sense to me. I think that the 25 followup question to that, though, is: Do we as a</p> <p style="text-align: right;">Page 95</p>	<p>1 proposed. But Staff has made a very clear recommendation 2 that we don't really go past those edits and use what Ag 3 presented as any sort of a framework for how third party 4 coalitions could be formed and participate and provide 5 some alternatives. 6 I think one alternative for us as a Board is to 7 say: Let's take that framework, let's -- 8 Can you give me the next slide. 9 I take very seriously everything on that list. I 10 don't think that Staff is raising any of this to be 11 obstructive. They're all of the policy issues, which is 12 really everything except the last three points. I think 13 we need to seriously talk about it, I think we need to 14 decide as a Board issue by issue do we agree with Staff on 15 it? Does that require us, if we're going to use the Ag 16 Proposal as a framework to make changes in that proposal? 17 When we get to the last three, I think we need to 18 look at the legal questions, as well, and say what do we 19 need to do to change in that proposal if we're going to 20 use it as a framework to comply with the law in our Order. 21 That's one alternative. And it's certainly the more labor 22 intensive one. I want to go home tonight. 23 MR. BRIGGS: Mr. Chair. 24 MR. YOUNG: Yes. 25 MR. BRIGGS: To that point, may I say</p> <p style="text-align: right;">Page 97</p>

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<p>1 something --</p> <p>2 MR. YOUNG: Yes.</p> <p>3 MR. BRIGGS: -- that I was going to say in the</p> <p>4 concluding remarks. I think it might be helpful in not</p> <p>5 having to go such a labor-intensive route. And that is</p> <p>6 that I don't think you need to resolve all the cons that</p> <p>7 are listed there. But I think you can realize the pros,</p> <p>8 the advantages that were listed on the previous slide.</p> <p>9 And that's because Part E can be developed as an</p> <p>10 alternative.</p> <p>11 Right now it's kind of a cloud. It's a moving</p> <p>12 cloud. It can be developed as a proposal. And within the</p> <p>13 framework that we have provided here, plus all the changes</p> <p>14 that we've added to encourage this flexibility, it can</p> <p>15 come back as a proposal for E.O. consideration. And if</p> <p>16 the E.O., whether it's me or somebody else, disagrees,</p> <p>17 they can come to the Board -- and come back to the Board.</p> <p>18 That's what we've been trying to get to in terms of a lot</p> <p>19 of the changes that we've been making to our proposal to</p> <p>20 not only allow that but to encourage that kind of</p> <p>21 approach.</p> <p>22 We've made significant changes to the Order to</p> <p>23 support that kind of alternative development. Without the</p> <p>24 Order in place, however, we won't have the incentives to</p> <p>25 do that. We will have incentives to continue to debate</p> <p style="text-align: right;">Page 98</p>	<p>1 the Ag group, at this time is not being -- at this time is</p> <p>2 not part of Staffs' recommendation into the Order.</p> <p>3 MR. BRIGGS: Correct.</p> <p>4 MR. JORDAN: But both the list of cons that are</p> <p>5 up there and the possible inclusion of other segments of</p> <p>6 the proposed Section E are contemplated within that end</p> <p>7 product of the Order as we have it right now.</p> <p>8 MR. BRIGGS: Where I'm not following you is that</p> <p>9 we're not including the list of cons.</p> <p>10 MR. JORDAN: I'm saying they're already in the</p> <p>11 existing Order.</p> <p>12 MR. YOUNG: In terms of they're addressed.</p> <p>13 MR. JORDAN: Correct.</p> <p>14 MR. YOUNG: They're addressed.</p> <p>15 MR. BRIGGS: Okay. That's why I wasn't following</p> <p>16 you.</p> <p>17 MR. JORDAN: I'm saying those issues that are</p> <p>18 cons have been recognized and addressed in the existing</p> <p>19 wording of the Order.</p> <p>20 Is that a fair statement?</p> <p>21 MR. BRIGGS: Yes.</p> <p>22 MR. YOUNG: Yes.</p> <p>23 MR. JORDAN: I also -- my experience is, when</p> <p>24 this can move up the food chain is to look to policy and</p> <p>25 look to law and look to goals and not get too involved in</p> <p style="text-align: right;">Page 100</p>
<p>1 and to argue without making progress.</p> <p>2 In trying to assist with that question, I think</p> <p>3 you framed the question really well, but I think that's a</p> <p>4 really reasonable route for the Board to take is to adopt</p> <p>5 the Order with the flexibility that we built into it to</p> <p>6 encourage something like Part E to come back to the Board.</p> <p>7 MR. YOUNG: Mr. Jordan.</p> <p>8 MR. JORDAN: To that end, I guess, I'll ask my</p> <p>9 question again to Mr. Briggs.</p> <p>10 In the result of all the edits we saw today in</p> <p>11 the existing Order, wouldn't it be your opinion that the</p> <p>12 cons are already envisioned within the wording of the</p> <p>13 existing Order and the process you just described of</p> <p>14 coming back with the proposal is already existing in the</p> <p>15 existing Order as we discussed today?</p> <p>16 MR. BRIGGS: I'm not sure I understood your</p> <p>17 question. I'm sorry.</p> <p>18 MR. JORDAN: Let me try again.</p> <p>19 We added a bunch of edits today that were the</p> <p>20 result today of public comment and proposals.</p> <p>21 MR. BRIGGS: Right.</p> <p>22 MR. JORDAN: There were some other edits that</p> <p>23 Staff added that both strengthened language and were</p> <p>24 givebacks as a result of comments yesterday. The</p> <p>25 inclusion of the full proposal of Section E as brought by</p> <p style="text-align: right;">Page 99</p>	<p>1 the last three lines on the cons list that have to do with</p> <p>2 my legal interpretation of the issue.</p> <p>3 Somebody else is going to get to chew on that</p> <p>4 another day. And I'd be happy to offer my two cents as a</p> <p>5 reminder to my peers of what the goal of this particular</p> <p>6 body are. I think you guys all know them, so I don't need</p> <p>7 to read them out. That's what I think the focus should be</p> <p>8 on. Are we moving toward those goals consistent within</p> <p>9 the policy and law. And can we say that the Order meets</p> <p>10 that criteria at the end of the day, whether it can be</p> <p>11 legally challenged or not is somebody else's fight another</p> <p>12 day. It's not my fight today.</p> <p>13 So, thanks.</p> <p>14 MR. YOUNG: To that end, I am not in favor of</p> <p>15 going through the con list and trying to work that in</p> <p>16 terms of the Ag Alternative. I am in favor of taking the</p> <p>17 language that I saw that you worked on, I think that that</p> <p>18 has merit. And I'd like to see that offered up and</p> <p>19 brought into the recommendation.</p> <p>20 MR. JOHNSTON: How about this? I think</p> <p>21 ultimately what we need to do is kind of just decide</p> <p>22 between one of those two approaches.</p> <p>23 MR. YOUNG: Right.</p> <p>24 MR. JOHNSTON: I'm perfectly happy to put that</p> <p>25 language out now, and we can have a sense of alternatives,</p> <p style="text-align: right;">Page 101</p>

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<p>1 if that language works. As I said, I've run it by the</p> <p>2 Executive Officer and counsel. But I think that that's --</p> <p>3 I think that's sort of the moving-forward question.</p> <p>4 Which of those -- I agree with you, Mike. What</p> <p>5 we need to do is, we need to come out with an Order. We</p> <p>6 need to do it without further delay, and it needs to be</p> <p>7 the Order that will best improve water quality. I am very</p> <p>8 definitely intrigued and interested in the potential for</p> <p>9 getting better results in some situations from the</p> <p>10 coalition approach, absolutely.</p> <p>11 And the question is, what's going to give us the</p> <p>12 best chance of doing that. If you want me to put that</p> <p>13 language out, Mr. Chairman --</p> <p>14 Have we got it on the thumb drive, Angela, or on</p> <p>15 the computer? Have we got copies of that for people?</p> <p>16 MS. HUNTER: We can put it up.</p> <p>17 MR. JOHNSTON: Yeah.</p> <p>18 There are two different pieces. The first piece</p> <p>19 is designed to come up with some more specificity as far</p> <p>20 as cooperative groundwater monitoring. And it starts with</p> <p>21 some changes on Page 4 of the Order, to Paragraph 11.</p> <p>22 Page 4, Paragraph 11.</p> <p>23 MR. JEFFRIES: That's of the Order itself?</p> <p>24 MR. JOHNSTON: That's of the Order itself.</p> <p>25 I take it back. It's -- I'm in findings. It's</p> <p style="text-align: right;">Page 102</p>	<p>1 Excuse me.</p> <p>2 Cooperative monitoring and reporting efforts.</p> <p>3 And then if you go down, we add, in cases where</p> <p>4 cooperative water quality improvement efforts were local</p> <p>5 or regional treatment strategies, and we add in</p> <p>6 coordinated by a third party group. Example, watershed</p> <p>7 group, water quality coalition, or other similar</p> <p>8 cooperative effort, or by a group of Dischargers,</p> <p>9 necessitate alternative water quality monitoring or a</p> <p>10 longer time schedule to achieve compliance. The</p> <p>11 Dischargers can request a different schedule.</p> <p>12 And then we go on down to, Dischargers may submit</p> <p>13 an alternative water quality monitoring and reporting</p> <p>14 plan. And there's some language that we'll get to in the</p> <p>15 next section as to why reporting is in there.</p> <p>16 Then it says groups of Dischargers, added</p> <p>17 language, and/or third party groups. Example, a watershed</p> <p>18 group or water quality coalition may submit to the</p> <p>19 Executive Officer for approval of alternative water</p> <p>20 quality monitoring and reporting programs. An alternative</p> <p>21 water quality monitoring and reporting program must</p> <p>22 include collection of data that will provide indicators of</p> <p>23 water quality improvement or pollution load reduction.</p> <p>24 And aggregate monitoring and reporting must be on a scale</p> <p>25 sufficient to track progress in small sub basins and be</p> <p style="text-align: right;">Page 104</p>
<p>1 Attachment 1. It's the Order itself. It's Attachment 1.</p> <p>2 MS. SCHROETER: We're making copies for you.</p> <p>3 MR. JOHNSTON: Should we just wait for the</p> <p>4 copies? Would that be easier?</p> <p>5 MR. YOUNG: Yeah.</p> <p>6 MR. JOHNSTON: That's awfully tiny to read.</p> <p>7 MR. YOUNG: I think we need to make more than</p> <p>8 just for the Board would be helpful.</p> <p>9 MR. JOHNSTON: I would point out that because</p> <p>10 this is done in red and black rather than underline</p> <p>11 strikeout, hopefully the copies will be readable if</p> <p>12 they're done on a monochrome printer.</p> <p>13 MR. DELGADO: Just to get going, can we enlarge</p> <p>14 the --</p> <p>15 MR. JOHNSTON: Sure. We can go there.</p> <p>16 MR. DELGADO: Can we enlarge the font, is what</p> <p>17 I'm suggesting.</p> <p>18 MR. BRIGGS: Enlarge the font.</p> <p>19 MR. JOHNSTON: Not zoom in, but change the font.</p> <p>20 (Discussion held off the record.)</p> <p>21 MR. JOHNSTON: So this is language regarding</p> <p>22 encouraging Dischargers to coordinate, and we include</p> <p>23 cooperative monitoring and reporting efforts. And my</p> <p>24 intention with the word reporting is not just reporting</p> <p>25 results. I take it back. It is reporting results.</p> <p style="text-align: right;">Page 103</p>	<p>1 sufficiently representative of conditions.</p> <p>2 Aggregate monitoring may apply to surface and</p> <p>3 groundwater. The Executive Officer will evaluate the</p> <p>4 alternative monitoring and reporting programs on a</p> <p>5 case-by-case basis considering the potential effectiveness</p> <p>6 of the aggregate or alternative monitoring. Example,</p> <p>7 request to conduct aggregate monitoring for a certain time</p> <p>8 frame to give new practices or treatment time to maximize</p> <p>9 effectiveness and other factors such as whether the farms</p> <p>10 are currently significantly contributing to impaired</p> <p>11 surface water or groundwater, with drinking water wells,</p> <p>12 or whether farms are in compliance with other provisions</p> <p>13 such as enrollment or submittal of annual compliance</p> <p>14 information.</p> <p>15 Dischargers who participate in an alternative</p> <p>16 monitoring and reporting programs maintain individual</p> <p>17 responsibility to comply with the Order's provisions. And</p> <p>18 there's just a couple more changes in this, if you go down</p> <p>19 to the next paragraph.</p> <p>20 MR. YOUNG: It does say the word conditions, not</p> <p>21 provisions.</p> <p>22 MR. JEFFRIES: Yeah, conditions.</p> <p>23 MR. YOUNG: Mike, is that --</p> <p>24 MR. JEFFRIES: The word up on the screen was</p> <p>25 conditions. You said provisions.</p> <p style="text-align: right;">Page 105</p>

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<p>1 MR. JOHNSTON: It says conditions. Thank you.</p> <p>2 MR. YOUNG: Yes.</p> <p>3 MR. JOHNSTON: Dischargers may continue to</p> <p>4 implement the alternative treatment or monitoring programs</p> <p>5 approved, and Dischargers may seek review of E.O.</p> <p>6 decisions by the Water Board.</p> <p>7 Let me explain my intent with this. The Order</p> <p>8 requires basically every farm to do at least one round of</p> <p>9 groundwater monitoring. And besides the concern that has</p> <p>10 been expressed by growers around potential liability and</p> <p>11 other issues regarding disclosing individual results,</p> <p>12 which has been somewhat dealt with by blurring both the</p> <p>13 location and identity of the farm the well's on.</p> <p>14 The question I was raising was, it seems like we</p> <p>15 need the monitoring to get a good baseline picture of</p> <p>16 what's going on in the groundwater. And I think that's a</p> <p>17 mutual interest with agriculture. We don't necessarily,</p> <p>18 in every situation, need every well. And there's a cost</p> <p>19 involved in this.</p> <p>20 And so the concept here is, if you can do</p> <p>21 monitoring in the sub watershed that's on a fine enough</p> <p>22 scale geographically -- and that's both north, south,</p> <p>23 east, west and up/down geographically to get the picture</p> <p>24 we need, we maybe don't need data from all the wells.</p> <p>25 I was looking at this as a potential cost savings</p> <p style="text-align: right;">Page 106</p>	<p>1 programs as set forth in Finding 11 and Condition 11.</p> <p>2 That's just enabling language for what's happening in the</p> <p>3 new Condition 11.</p> <p>4 MR. JEFFRIES: Is that date still good,</p> <p>5 October 1st of '12?</p> <p>6 MR. JOHNSTON: That date may not be good.</p> <p>7 MR. DELGADO: Whatever the date is --</p> <p>8 MR. JOHNSTON: Whatever the date is it is.</p> <p>9 MR. DELGADO: We've already agreed on it as a</p> <p>10 change.</p> <p>11 MR. JOHNSTON: We've talked about. We haven't</p> <p>12 voted on anything.</p> <p>13 MR. THOMAS: Mr. Chairman and Mr. Johnston.</p> <p>14 MR. YOUNG: Yes.</p> <p>15 MR. THOMAS: I'm sorry I interrupted you.</p> <p>16 Backing up, it says here, Dischargers may comply</p> <p>17 with this Order by participating in third party groups.</p> <p>18 And at the end of that sentence, it says, approved by the</p> <p>19 Central Coast Water Board. The direction you're going in</p> <p>20 would be -- that would have to be changed to, approved by</p> <p>21 the Executive Officer.</p> <p>22 MR. JOHNSTON: I would -- yeah. I would say by</p> <p>23 the Central Coast Water Board or the Executive Officer.</p> <p>24 There is an appeal from the Executive Officer in the thing</p> <p>25 I'm about to get to.</p> <p style="text-align: right;">Page 108</p>
<p>1 to be able to get aggregate results on a fine enough scale</p> <p>2 that it's useful to us and to the affected farmers,</p> <p>3 frankly. And we may well be able to do that with fewer --</p> <p>4 with less sampling of wells, or for that matter, there are</p> <p>5 going to be surface water situations where this is</p> <p>6 applicable, as well.</p> <p>7 MR. YOUNG: Why don't you go through the other --</p> <p>8 MR. JOHNSTON: Yeah. Let me go through the</p> <p>9 others.</p> <p>10 Page 13, Condition 10, that is -- we're on into</p> <p>11 the -- this is the language that already talks about how</p> <p>12 Dischargers can comply with the Order by participating in</p> <p>13 different kinds of groups or cooperative efforts. What</p> <p>14 was added in here is the language including implementing</p> <p>15 water quality improvement projects and then it references</p> <p>16 the MRPs.</p> <p>17 Because, we're providing below, an alternative</p> <p>18 way to do the monitoring. We're saying, or the</p> <p>19 alternative monitoring and reporting programs as provided</p> <p>20 in Condition 11 below. And Condition 11 is a new</p> <p>21 condition. And what -- you want to page down past --</p> <p>22 since we're already on this page, we can come back to 72</p> <p>23 and 73. Actually, let's go back up.</p> <p>24 72 and 73 are from the Tier 3 MRP. And we're</p> <p>25 just adding, or alternative monitoring and reporting</p> <p style="text-align: right;">Page 107</p>	<p>1 MR. THOMAS: The way this is set up, it would</p> <p>2 have to come back to you.</p> <p>3 MR. JOHNSTON: I understand. So I would say</p> <p>4 approved by the Executive Officer or the Central Coast</p> <p>5 Water Board because what we've got down -- the next thing</p> <p>6 we're going to go through is the process of getting</p> <p>7 approval for third party groups. And it goes to the</p> <p>8 Executive Officer, and it's appealable to the Central -- a</p> <p>9 decision -- a denial by the Executive Officer is</p> <p>10 appealable to the Board. So I would assume we would want</p> <p>11 to put them both in there.</p> <p>12 Thank you for catching that, Mike.</p> <p>13 MR. DELGADO: So it would be and/or? It would be</p> <p>14 the Executive Officer and/or?</p> <p>15 MR. JOHNSTON: And/or, yes. No, the Executive</p> <p>16 Officer or.</p> <p>17 MR. DELGADO: Or.</p> <p>18 MR. JOHNSTON: Because it may well not come to</p> <p>19 the Central Coast Water Quality Board at all. The</p> <p>20 Executive Officer approves it, they're not going to appeal</p> <p>21 it. It's not going to come to us.</p> <p>22 So let's go down to the new Condition 11. This</p> <p>23 is all new language. And basically the point of this is</p> <p>24 to set up some criteria for third party groups, to set up</p> <p>25 a process to evaluate proposals for third party groups</p> <p style="text-align: right;">Page 109</p>

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<p>1 involving a technical advisory committee, and to set up --</p> <p>2 which then makes a recommendation to the Executive</p> <p>3 Officer, and then to set up a process where an Executive</p> <p>4 Officer denial is appealable to the Board.</p> <p>5 Do I need to read this whole thing?</p> <p>6 MS. HUNTER: Yes.</p> <p>7 MR. JOHNSTON: I can read it.</p> <p>8 Did people get copies yet?</p> <p>9 MR. YOUNG: Yes.</p> <p>10 MR. JOHNSTON: All of what's in Condition 11,</p> <p>11 while it's not bolded, it's all new language.</p> <p>12 MR. YOUNG: Right.</p> <p>13 MR. JOHNSTON: The entire condition is new. It</p> <p>14 would renumber the Condition 11 that follows to</p> <p>15 Condition 12 and everything down below it.</p> <p>16 And it reads as follows: Dischargers may form</p> <p>17 third party groups to develop and implement alternative</p> <p>18 water quality management practices, i.e., group projects</p> <p>19 or cooperative monitoring and reporting programs to comply</p> <p>20 with this Order. At the discretion of the Executive</p> <p>21 Officer, Dischargers that are a participant in a third</p> <p>22 party group that implements Executive Officer approved</p> <p>23 water quality improvements projects or Executive Officer</p> <p>24 approved alternative monitoring and reporting programs may</p> <p>25 be moved to a lower Tier. Example, Tier 3 to Tier 2, or</p> <p style="text-align: right;">Page 110</p>	<p>1 provided to the Water Board. Monitoring points must be</p> <p>2 representative but may not always be at the edge of farms</p> <p>3 so long as monitoring result demonstrate water quality</p> <p>4 improvement and the efficacy of a project.</p> <p>5 In addition, monitoring must, one, characterize</p> <p>6 and be representative of discharge to receiving water.</p> <p>7 Two, demonstrate project effectiveness. Three, and verify</p> <p>8 progress towards water quality improvement and waste water</p> <p>9 production.</p> <p>10 Project proposals will evaluated by a technical</p> <p>11 advisory committee comprised of two researchers or</p> <p>12 academics skilled in agricultural practices and/or water</p> <p>13 quality, one farm advisor NRCS or RCD, one grower</p> <p>14 representative, one environmental representative, one</p> <p>15 environmental justice or environmental health</p> <p>16 representative, and one regional Board Staff.</p> <p>17 The TAC must have a minimum of five members to</p> <p>18 evaluate project proposals and make recommendations to the</p> <p>19 Executive Officer. The Executive Officer has discretion</p> <p>20 to approve any project after receiving project evaluation</p> <p>21 results and recommendations from the committee.</p> <p>22 If the Executive Officer denies approval, the</p> <p>23 third party group may seek review by the regional Board.</p> <p>24 As stated in the NPS policy, management practice</p> <p>25 implementation is not a substitute for compliance with</p> <p style="text-align: right;">Page 112</p>
<p>1 Tier 2 to Tier 1, and/or provided alternative project</p> <p>2 specific timelines and milestones.</p> <p>3 To be subject to tier changes or alternative</p> <p>4 timelines, projects will be evaluated for, among other</p> <p>5 elements, project description. The description must</p> <p>6 include identification of participant's methods and</p> <p>7 schedule for implementation.</p> <p>8 Purpose. Proposal must state desired outcome for</p> <p>9 goals of the projects. Example, pollutants to be</p> <p>10 addressed, the amount of pollutant load to be reduced,</p> <p>11 water quality improvement expected.</p> <p>12 Scale. Solutions must be scaled to address</p> <p>13 impairment.</p> <p>14 Chance of success. Projects must demonstrate a</p> <p>15 reasonable chance of eliminating toxicity within the</p> <p>16 permit term, five years, or reducing discharge of</p> <p>17 nutrients to surface and groundwater, long-term solutions</p> <p>18 and contingencies. Proposals must address what new</p> <p>19 actions will be taken if the project does not meet goals</p> <p>20 and how the project will be sustained through time.</p> <p>21 Accountability. Proposals must set milestones</p> <p>22 that indicate progress towards goals stated as above in</p> <p>23 purpose.</p> <p>24 Monitoring and reporting. Description of</p> <p>25 monitoring and measuring methods and information to be</p> <p style="text-align: right;">Page 111</p>	<p>1 water quality requirements. If the project is not</p> <p>2 effective in achieving Water Quality Standards, additional</p> <p>3 management practices by individual Dischargers or third</p> <p>4 party groups will be necessary.</p> <p>5 The point of this is to -- is to -- if we choose</p> <p>6 not to use the Ag Proposal as a framework and give -- make</p> <p>7 a set of decisions today on a detailed program to give a</p> <p>8 framework within which such proposals can be brought to</p> <p>9 the Board -- or excuse me -- can be brought to the</p> <p>10 Executive Officer after evaluation by a technical advisory</p> <p>11 committee -- and we know that the technical advisory</p> <p>12 committee, back before this process became so polarized,</p> <p>13 was a functional group that got some stuff done. And my</p> <p>14 hope in proposing this is that it would provide some</p> <p>15 balanced way to evaluate stuff, provide input to the</p> <p>16 Executive Officer and to the Board as well stuff that's</p> <p>17 appealed to the Board.</p> <p>18 MR. YOUNG: I think it's a great proposal. I</p> <p>19 think what you've done is taken what Staff has always said</p> <p>20 was achievable as part of what they have been proposing,</p> <p>21 and essentially put down in writing what it might look</p> <p>22 like, and make that part of what we're going to</p> <p>23 incorporate in the Order and the Monitoring Program.</p> <p>24 So how much of this did you write?</p> <p>25 MR. JOHNSTON: About half.</p> <p style="text-align: right;">Page 113</p>

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<p>1 MR. YOUNG: Good. It's great.</p> <p>2 MR. BRIGGS: Mr. Chair.</p> <p>3 MR. YOUNG: Yes.</p> <p>4 MR. BRIGGS: Mr. Johnston asked --</p> <p>5 MR. JOHNSTON: In answer to your question about</p> <p>6 what I wrote, this was a back and forth between --</p> <p>7 MR. YOUNG: I understand.</p> <p>8 MR. JOHNSTON: -- myself, Roger, Frances. And I</p> <p>9 would imagine that Roger was consulting other Staff on it.</p> <p>10 MR. YOUNG: Right.</p> <p>11 Is this acceptable to Staff?</p> <p>12 MR. BRIGGS: That was the reason Mr. Johnston</p> <p>13 wanted to vet it instead of dropping it here was to see if</p> <p>14 it would be acceptable. Mr. Johnston asked me to help</p> <p>15 flesh out some ideas for a technical advisory committee.</p> <p>16 But I wanted just one -- I think it's a typo type of</p> <p>17 admission. In the last paragraph that you just referred</p> <p>18 to, the second line, that parenthetical -- I think my</p> <p>19 intent was for that to be an, e.g., for example NRCS, or</p> <p>20 RCD. And we should spell that out, too, instead of using</p> <p>21 acronyms.</p> <p>22 MR. DELGADO: Can I ask a specific question?</p> <p>23 MR. YOUNG: Yes.</p> <p>24 MR. DELGADO: On New Condition 11, all new</p> <p>25 language, there's about seven black dot bullets. And the</p> <p style="text-align: right;">Page 114</p>	<p>1 projects that are geared towards one or the other. You're</p> <p>2 likely to not have the perfect silver bullet for both</p> <p>3 toxicity and nutrients.</p> <p>4 So, for example, the wood chip, pretty simple</p> <p>5 technology that can be pretty effective with nitrates, but</p> <p>6 it's not really targeting toxicity.</p> <p>7 MR. JOHNSTON: So what could fit within this</p> <p>8 framework is a variety of things, from something like what</p> <p>9 Ag was proposing, which was a large scale coalition</p> <p>10 across -- I would suspect they were looking at across</p> <p>11 multiple growing areas, multiple crops that could fit</p> <p>12 within this. But what could also fit within this is a</p> <p>13 much more limited scale project that's addressing -- maybe</p> <p>14 not even addressing every issue in the Order, but</p> <p>15 addressing certain issues in the Order.</p> <p>16 It may be that such -- now, the Ag Proposal calls</p> <p>17 for -- participation in that proposal brings you to</p> <p>18 Tier 1. This says it can drop you down Tier 3 to Tier 2,</p> <p>19 Tier 2 to Tier 1. So it could be that this is a very</p> <p>20 limited scope project that tries to accomplish one thing,</p> <p>21 and it moves you from Tier 3 to Tier 2. There's the</p> <p>22 ability to propose a lot of different kinds of projects in</p> <p>23 here.</p> <p>24 MR. YOUNG: Okay.</p> <p>25 MR. JEFFRIES: Good job.</p> <p style="text-align: right;">Page 116</p>
<p>1 fourth bullet is Chance of Success. It says, must</p> <p>2 demonstrate reasonable chance of eliminating toxicity</p> <p>3 within the permit term of five years. And I just wondered</p> <p>4 if you meant to say eliminate toxicity or more</p> <p>5 realistically would substantially reduce or reduce or</p> <p>6 something?</p> <p>7 MR. JOHNSTON: It says, within the permit term or</p> <p>8 unless this got -- let me compare.</p> <p>9 MR. YOUNG: The first part deals with toxicity;</p> <p>10 the second part deals with nutrients.</p> <p>11 MR. JOHNSTON: Right.</p> <p>12 MR. DELGADO: Toxicity theoretically could remain</p> <p>13 high, low, or medium. But then if you reduced nitrates to</p> <p>14 surface and to the groundwater, the toxicity would be let</p> <p>15 lie.</p> <p>16 MR. JOHNSTON: What it says is, if these are</p> <p>17 the -- it says that it has to demonstrate a reasonable</p> <p>18 chance of eliminating toxicity within the five years,</p> <p>19 which is a goal of this, or reducing the nutrients.</p> <p>20 Everybody knows we're not going to eliminate those</p> <p>21 nutrients in five years. That's no secret.</p> <p>22 Go ahead, Roger. You look like you're about to</p> <p>23 jump --</p> <p>24 MR. BRIGGS: I was going to point out that there</p> <p>25 could very well be projects -- most likely will be</p> <p style="text-align: right;">Page 115</p>	<p>1 MR. YOUNG: Good job. All right.</p> <p>2 So what would we like to do? Do you want to have</p> <p>3 a motion put on the table? Is there more discussion</p> <p>4 needed?</p> <p>5 Dr. Hunter.</p> <p>6 MS. HUNTER: Well, I do appreciate this last</p> <p>7 conceptual and also very well-defined and spelled-out</p> <p>8 opportunity to open the door to the intent New Part E. So</p> <p>9 I really appreciate that language, and I believe -- and</p> <p>10 I'm glad to know that there was time for Staff and</p> <p>11 Mr. Briggs and Frances McChesney to also consider the</p> <p>12 language. Knowing that, I would like to propose that we</p> <p>13 accept those suggest revisions wholesale.</p> <p>14 With that in mind, I would like to move the</p> <p>15 motion to approve. So unless others have anything they</p> <p>16 want to add to that.</p> <p>17 Mr. Johnston.</p> <p>18 MR. YOUNG: As part of your motion, are you</p> <p>19 incorporating the Staffs' recommendation?</p> <p>20 MS. HUNTER: Why don't I go ahead and make the</p> <p>21 motion.</p> <p>22 MR. JORDAN: Okay.</p> <p>23 MS. HUNTER: I want to move to approve the</p> <p>24 renewal of the Conditional Waiver of Waste Discharge</p> <p>25 Requirements for discharge from irrigated lands, which is</p> <p style="text-align: right;">Page 117</p>

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<p>1 Order Number R3-2012-0011. And that's the revisions 2 listed by Staff and reviewed by the Board today, as well 3 as the changes in language noted by Ms. McChesney to 4 insert specific language that is consistent with language 5 in the Non Point Source Policy. And that the revisions to 6 the Order -- pardon me -- and that revisions to the Order 7 with noted corrections submitted by Mr. Johnston be 8 incorporated into the final language of the Order.</p> <p>9 So I'm proposing that the motion to approve 10 include all of the Staff edits that we reviewed and 11 discussed today, that Ms. McChesney's noted consistency 12 with Non Point Source Policy, and then your printed and 13 written out, submitted revisions that we just reviewed, 14 that all of those changes be incorporated into the permit 15 and that we ask Mr. Briggs to oversee the final revisions 16 to ensure accuracy and that they be taken from the record.</p> <p>17 MS. McCHESNEY: Can I just add one more thing? 18 MR. YOUNG: Yes. 19 MS. HUNTER: Yes. 20 MS. McCHESNEY: I did check the Non Point Source 21 Policy and the quote is actually accurate from the policy. 22 MR. JEFFRIES: That's good. 23 MS. McCHESNEY: The second thing is that the 24 Staff had agreed that the Order part of the Order number 25 46 that referred to the authority to issue Orders and</p> <p style="text-align: right;">Page 118</p>	<p>1 that, "agendize" a status report for the Board so that you 2 can see how things are going. Others would have a chance 3 to address you in terms of how things are going and at 4 probably some regular intervals after that.</p> <p>5 I do think that from my perspective of having 6 worked on a lot of contentious issues in a few decades 7 here that in 6 months -- 3 months, 6 months, whenever, 8 that you will probably look back and say, gee, what was 9 all the fuss about? Because we've prompted management 10 practices that are more effective. We've acquired some 11 accountability for those. And we're on the road to 12 improvements.</p> <p>13 When you consider that perspective, if you can 14 find yourself to accept that, and you weigh that against 15 the urgency of acting in the face of severe toxicity 16 problems we have throughout the region, as we discussed 17 over and over again, and severe public health threats that 18 are unprecedented in their scope in this region, 19 unprecedented in this region's history, it's clear to me 20 now is the time to act on this motion.</p> <p>21 MS. McCHESNEY: I want to make sure your motion 22 includes a certification of the subsequent EIR -- right -- 23 include certification of the subsequent EIR that's part of 24 the Staffs' -- 25 MR. THOMAS: It's on the screen.</p> <p style="text-align: right;">Page 120</p>
<p>1 require groundwater stuff would be moved into a finding 2 instead of in the Order part, which would be Number 46. 3 That wasn't specifically included in the Staffs' proposal.</p> <p>4 MS. HUNTER: We would want to include that 5 correction, as well -- or that revision?</p> <p>6 MS. McCHESNEY: It's Page 21 of the Order, and 7 it's Number 46 would be moved to a finding. I don't know 8 what finding number, but that's okay.</p> <p>9 MR. YOUNG: Okay.</p> <p>10 MS. McCHESNEY: And then Roger did have something 11 he does need to add. Right?</p> <p>12 MR. BRIGGS: I think you actually covered a 13 couple of logistics things because you said all edits that 14 we discussed today, which includes the two -- the changes 15 in the Staff report as well as the supplemental sheet that 16 was in your folders, we want to point out that this 17 item -- consideration of this item includes the entire 18 record for this matter.</p> <p>19 MS. McCHESNEY: Right. From -- the 2004 adoption 20 until today including all the written comments, Staff 21 reports, audios, and everything else.</p> <p>22 MR. BRIGGS: I also want to point out that I 23 think with the motion it would be a good idea to direct me 24 to have Staff monitor the implementation of this Order. 25 And after a quarter, perhaps four months, something like</p> <p style="text-align: right;">Page 119</p>	<p>1 MS. McCANN: Okay. Good. 2 MR. THOMAS: Also the MRP.</p> <p>3 MS. McCHESNEY: Also I wanted to clarify that 4 yesterday there were quite a few slide presentations that 5 included slides about the report that came out on Tuesday. 6 And I want to make clear that the record does not include 7 those slides that were -- the record generally includes 8 the slide -- it includes the slide presentations, but 9 we'll specifically delete those slides that had anything 10 to do with that.</p> <p>11 MR. YOUNG: Which report? Can you be more clear.</p> <p>12 MS. McCHESNEY: The -- I -- what's the -- 13 MS. HUNTER: Davis -- 14 MR. THOMAS: The U.C. Davis Harter SBX2 Report. 15 MR. YOUNG: I just want to make sure the record 16 is clear.</p> <p>17 MS. McCHESNEY: And I made a list of those slide 18 numbers and presentations to be sure that Staff -- 19 MR. YOUNG: Okay.</p> <p>20 MS. McCANN: -- excludes those from the record. 21 And then the other thing to clarify is that the 22 record -- it starts with the 2004 Order and goes through 23 today. There are some things that may be necessary 24 preceding 2004 in order to make the record complete. For 25 example, with respect to CEQA. But generally the record</p> <p style="text-align: right;">Page 121</p>

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<p>1 preceding the 2004 adoption is not part of this record.</p> <p>2 MR. YOUNG: Are those changes acceptable?</p> <p>3 MS. HUNTER: Yes.</p> <p>4 MR. THOMAS: Mr. Chairman.</p> <p>5 MR. YOUNG: Yes.</p> <p>6 MR. THOMAS: No one has said out loud yet, but we</p> <p>7 are also recommending adoption of the monitoring and</p> <p>8 reporting program that goes with this Order.</p> <p>9 MS. HUNTER: I would add to my motion that we</p> <p>10 adopt the monitoring and reporting program Number</p> <p>11 R3-2012-0011.</p> <p>12 MR. THOMAS: And the CEQA resolution.</p> <p>13 MS. HUNTER: I'm sorry. I thought we already</p> <p>14 agreed to that. Yes, the CEQA resolution.</p> <p>15 MR. YOUNG: Mr. Jordan.</p> <p>16 MR. JORDAN: Not to stop the momentum, but I'll</p> <p>17 be happy to support the direction we're going and to thank</p> <p>18 Mr. Johnston for his efforts, but I'll continue to want to</p> <p>19 note the significant giveback that Staff made on the</p> <p>20 nitrate loading. I continue to feel that that was</p> <p>21 significant concession on the part of Staff.</p> <p>22 One of the provisions of Board work alone is not</p> <p>23 just to improve but to protect from degradation. I take</p> <p>24 that phrase as an aggressive statement, not a reactionary</p> <p>25 statement, but one that puts the burden on this Board to</p> <p style="text-align: right;">Page 122</p>	<p>1 different numbers.</p> <p>2 MS. SCHROETER: It has a dash 01, 02 and 03 --</p> <p>3 MS. McCHESNEY: Okay.</p> <p>4 MS. SCHROETER: -- in all of them.</p> <p>5 MS. McCANN: The numbers are consistent.</p> <p>6 MR. YOUNG: Mr. Johnston and then Mr. Jeffries.</p> <p>7 Go ahead.</p> <p>8 MR. JOHNSTON: I hate to tie myself on the tracks</p> <p>9 in front of the train here. I know we all want to go</p> <p>10 home. But, quite frankly, my purpose in running through</p> <p>11 that language was to lay out a choice for the Board for</p> <p>12 two alternatives that we take to move forward on passing</p> <p>13 an Order tonight.</p> <p>14 And given the -- everybody on all sides has put a</p> <p>15 huge amount of work into this. But given the work that</p> <p>16 went into what was put before us yesterday, I still think</p> <p>17 it appropriate to see if there is interest on the Board</p> <p>18 in -- and I'm prepared to stay tonight as late as I need</p> <p>19 to -- in working through the Ag Proposal and seeing if we</p> <p>20 can accommodate and resolve the policy issues raised by</p> <p>21 Staff and the legal issues raised by Staff.</p> <p>22 I am interested in extracting the maximum amount</p> <p>23 of collaboration possible without diminishing our results</p> <p>24 in terms of water quality -- can add to our results in</p> <p>25 terms of water quality. So I mean, I'm mentally counting</p> <p style="text-align: right;">Page 124</p>
<p>1 act to protect rather than just seek actions to improve</p> <p>2 situations. In fact, along with outside the box, I think</p> <p>3 improving water quality is probably one of the misused</p> <p>4 phrases because it infers that water quality is already at</p> <p>5 some level of acceptability, and you're just ratcheting it</p> <p>6 up a little better.</p> <p>7 The fact of the matter is, it's really at a</p> <p>8 degraded point right now. We're really trying to catch</p> <p>9 up. I think the ball clearly should be in the</p> <p>10 Discharger's court now. You've been given some</p> <p>11 significant concessions and significant tools to work</p> <p>12 with. And in five years from now, we hope to see better</p> <p>13 results. I hope that we don't have to go through this</p> <p>14 process again and talk about some of these more stringent</p> <p>15 give-ups that we did today.</p> <p>16 Thank you.</p> <p>17 MR. YOUNG: Is that a second to the motion?</p> <p>18 MR. JORDAN: I'd be happy to second it with those</p> <p>19 comments.</p> <p>20 MR. YOUNG: We're not going to vote yet on it.</p> <p>21 MR. JORDAN: Okay.</p> <p>22 Go ahead.</p> <p>23 MS. McCHESNEY: I just want to make one</p> <p>24 clarification. Your MRP number, that includes all three</p> <p>25 MRPs, that number? Because in the draft, they had three</p> <p style="text-align: right;">Page 123</p>	<p>1 noses and suspecting that there's not support on the Board</p> <p>2 for that, but it's a question I'd like to ask.</p> <p>3 And I'd hoped to ask it before a motion was made.</p> <p>4 Perhaps I can be advised as to if there's an appropriate</p> <p>5 parliamentary way. I suppose I could propose to amend the</p> <p>6 motion. That's kind of clumsy to something that's</p> <p>7 completely different.</p> <p>8 Frances.</p> <p>9 MS. McCHESNEY: I just looked at the rule. This</p> <p>10 is what's called a main motion, and you can debate the</p> <p>11 main motion, and then, I assume, included in the debate is</p> <p>12 whether to -- what to do about that motion and then vote</p> <p>13 on it and then do something else.</p> <p>14 MR. JORDAN: What you're saying is that --</p> <p>15 MS. McCHESNEY: Let me look some more about what</p> <p>16 to do about that.</p> <p>17 MR. JOHNSTON: -- is that the only way to address</p> <p>18 on the Board before we vote on Dr. Hunter's motion,</p> <p>19 whether there's interest in the Board in going through and</p> <p>20 attempting to revise the Ag Proposal, is to first vote</p> <p>21 down Dr. Hunter's motion?</p> <p>22 MS. McCHESNEY: No. That's not what I said. You</p> <p>23 can discuss your idea, and I'll keep looking.</p> <p>24 MR. YOUNG: Let's have everybody speak to the</p> <p>25 motion, and we can address, I think, the questions.</p> <p style="text-align: right;">Page 125</p>

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<p>1 She'll provide the answers.</p> <p>2 MR. JORDAN: We can count noses that way.</p> <p>3 MR. YOUNG: Yeah, yeah.</p> <p>4 Let me just state how I feel about this. I know</p> <p>5 Russ and I have been through this from the beginning. We</p> <p>6 enjoy the experience of having seen the development of</p> <p>7 this whole process from its very beginning to where it is</p> <p>8 today.</p> <p>9 There's been a huge amount of effort put into</p> <p>10 this by everybody, both the Ag community, the</p> <p>11 environmental community, and now we have the environmental</p> <p>12 justice interests involved in this, which we've never had</p> <p>13 before. That wasn't part of our first permit. This is a</p> <p>14 new element.</p> <p>15 We've had the revelation of the extent of the</p> <p>16 groundwater contamination with nitrate that was not there</p> <p>17 before. We had a little bit of indication that it was</p> <p>18 there, but it had become really apparent with a lot of</p> <p>19 data that it is quite widespread, and people are drinking</p> <p>20 water that needs to be addressed in terms of, you know,</p> <p>21 remediation, source control.</p> <p>22 The list of the cons, I'm not interested in going</p> <p>23 through and trying to piece by piece address them. I</p> <p>24 appreciate the offer up of the choice that we could do</p> <p>25 that and spend the time to do it. I think there are some</p> <p style="text-align: right;">Page 126</p>	<p>1 us their focus was in labeling and application of</p> <p>2 pesticides. It's not in looking at protecting beneficial</p> <p>3 uses.</p> <p>4 We have had Fish and Game come before us and tell</p> <p>5 us they -- and the Department of Health all really in</p> <p>6 concurrence with what we're trying to do. So I appreciate</p> <p>7 ag's added effort. I mean, they have moved this process,</p> <p>8 I think, immensely in a direction to where they'd like to</p> <p>9 go. I know they'd like to get it further, but I think,</p> <p>10 practically speaking, we're at a point now where we can go</p> <p>11 ahead and vote and adopt what's being proposed.</p> <p>12 I feel comfortable with it. I think my only</p> <p>13 remaining issue would be -- and this is something</p> <p>14 Dr. Wolff had mentioned.</p> <p>15 I wish you would have approached Roger, which you</p> <p>16 could have done before the Board meeting, that this may be</p> <p>17 a huge implementation task for the agency in terms of</p> <p>18 getting everybody on board, making sure we have all the</p> <p>19 growers, making sure they know what they're supposed to be</p> <p>20 doing, and making sure that the agency has shifted some</p> <p>21 Staff, at least, to get the ball rolling in this, and that</p> <p>22 there should be some kind of an additional technical</p> <p>23 advisory committee, if you want to call it that. I think</p> <p>24 Dr. Wolff called it a management advisory committee.</p> <p>25 MS. McCHESNEY: Can I just interrupt to --</p> <p style="text-align: right;">Page 128</p>
<p>1 fundamental differences when you really boil everything</p> <p>2 down to what Ag has proposed that I don't think we're</p> <p>3 going to be able to reconcile.</p> <p>4 I think what we've had for many years is an</p> <p>5 approach that takes the data and keeps it, to some degree,</p> <p>6 from public scrutiny, kind of camouflages it somewhat. I</p> <p>7 know Tess Dunham is of the opinion that that can be done.</p> <p>8 It can be done through coalitions. It can be aggregate</p> <p>9 collection and then reporting summaries.</p> <p>10 I'm just not comfortable with that approach.</p> <p>11 Fundamentally I'm not comfortable with that. I read the</p> <p>12 Water Code statute, and my take from that is that this</p> <p>13 agency has a responsibility to be transparent to the</p> <p>14 public process in terms of requiring efforts that will</p> <p>15 change over time these sources of contamination, that</p> <p>16 there will be accountability to those that are making</p> <p>17 changes on the ground.</p> <p>18 And it's a public -- these are public resources</p> <p>19 that we are addressing and are statutorily mandated to</p> <p>20 protect both the groundwater, surface waters. We're the</p> <p>21 only agency in this State for this region that has that</p> <p>22 responsibility. It's not going to be the Department of</p> <p>23 Pesticide Regulations.</p> <p>24 We have had them come before us -- actually,</p> <p>25 before the three of you came on board, but they did tell</p> <p style="text-align: right;">Page 127</p>	<p>1 MR. YOUNG: Yes.</p> <p>2 MS. McCHESNEY: Dr. Wolff had -- his conflict of</p> <p>3 interest precluded him from discussing this with Staff.</p> <p>4 You mentioned him talking to Roger, and he couldn't do</p> <p>5 that.</p> <p>6 MR. YOUNG: He couldn't? I thought he could.</p> <p>7 MS. McCHESNEY: No. He can only comment as an</p> <p>8 individual representing himself. He could not discuss --</p> <p>9 MR. YOUNG: He could never have discussed it?</p> <p>10 THE WITNESS: No.</p> <p>11 MR. YOUNG: Okay.</p> <p>12 MS. McCHESNEY: I just wanted to clarify that.</p> <p>13 MR. WOLFF: So I'm off the hook.</p> <p>14 MR. YOUNG: But after today, there will be no</p> <p>15 pending matter, and he could participate in --</p> <p>16 MS. McCHESNEY: Yeah. I'll check on that, but I</p> <p>17 don't think we need to go there right now.</p> <p>18 MR. YOUNG: That would be my -- I think he made a</p> <p>19 good suggestion with that, to make sure that things get on</p> <p>20 board and implemented properly.</p> <p>21 To answer your question, Mike, I'm in favor of</p> <p>22 the motion as it stands. But let's hear --</p> <p>23 Russ has a keen interest in this issue. I do</p> <p>24 because of how far back we go with this firm's origin.</p> <p>25 How do you feel?</p> <p style="text-align: right;">Page 129</p>

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<p>1 MR. JEFFRIES: I have mixed emotions. I was 2 really in favor after I heard all the testimony yesterday 3 ask what the Ag presented and all the testimony. I was 4 really -- after I heard all the testimony because I'm the 5 type of person -- it's a public hearing. I like to hear 6 all the information before I make a decision. I was 7 really leaning toward the Ag Proposal, and then the 8 legality issues came up.</p> <p>9 And, Mike, if you're looking for an answer, I'd 10 be willing to stay here and iron this out. But I don't 11 know if we would be that much further along than we are 12 today, what you've just proposed and what the motion is in 13 front of us.</p> <p>14 We have to remember that there's always the 15 opportunity, if there's some refinement that can be 16 brought to the Executive Officer and to the Board for us 17 to open up the Order again and change the Order to make it 18 better.</p> <p>19 Orders are always in flux because each time that 20 they come up for renewal, there's a little bit of changes 21 and hopefully they're for the better. So I'm looking -- 22 you know, you'd like to have a win-win situation for 23 everybody.</p> <p>24 And I think the -- from where the first Order the 25 Staff proposed for us and for what they've done today, the</p> <p style="text-align: right;">Page 130</p>	<p>1 doesn't work. You've got to do something. We need some 2 help. We need some direction from Staff, and we're not 3 getting it.</p> <p>4 I thank Mr. Johnston for doing what he's done. I 5 think it's a great compromise. But I think you and I are 6 probably thinking on the same lines. I'll stay here and 7 hammer it out if you want to.</p> <p>8 MR. YOUNG: He just offered it up as an option.</p> <p>9 MR. JEFFRIES: I know he did. I'm trying to tell 10 him --</p> <p>11 MR. YOUNG: Right.</p> <p>12 MR. JEFFRIES: -- there's still the opportunity 13 to have that happen. And those folks can come back and 14 say, these are the areas that we're having problems with, 15 and this is what we're proposing to make that better.</p> <p>16 So I'll stop.</p> <p>17 MR. YOUNG: Mr. Delgado.</p> <p>18 MR. DELGADO: If I was an Ag member or a 19 grower -- and I considered the Ag Proposal -- I had some 20 ownership. It's kind of like my preferred alternative; 21 it's my plan. I might feel some relief that there seems 22 to have been some changes in my direction and fairly 23 significant ones.</p> <p>24 We now have the spelled-out option of aggregate 25 monitoring and aggregate reporting being a potential which</p> <p style="text-align: right;">Page 132</p>
<p>1 Staff has conceded considerably.</p> <p>2 I think what Ag has proposed, from what they 3 originally proposed, they have conceded some and made some 4 moves in the right direction.</p> <p>5 So my interpretation of this is that it is kind 6 of a win-win type situation. Again, I think it's time -- 7 I think I said this a couple meetings back -- I'd like to 8 have this Order completed before I leave the Board -- that 9 we can move forward.</p> <p>10 I think that if we give that direction -- and I 11 like the cooperative monitoring. I really like that. I 12 think it's got some real merit in there. Not only that, 13 but it really puts responsibility back on to the people 14 that are using it. And I think that's kind of good. And 15 I think they kind of proposed that and said, look at, you 16 know, we'll take that responsibility on, and we'll be the 17 ones that monitors that.</p> <p>18 It would relieve the Staff. And I questioned 19 yesterday and I've questioned before, do we have enough 20 Staff to handle all this to implement it. And, quite 21 frankly, I still have that question. And I'm not really 22 sure. But I guess I'm going to find out pretty soon 23 because if it doesn't work, all these folks that are here 24 today and the ones that were here yesterday are going to 25 be back here pounding on the table and saying, look, it</p> <p style="text-align: right;">Page 131</p>	<p>1 wasn't part of the plan, you know, half an hour ago.</p> <p>2 We have some extensions on some of the -- the 3 most immediate near-term deadlines. Something that they 4 were asking for. We have a new carrot process to move 5 down from Tier 3 or down from Tier 2. That was a big 6 message that we heard. So that would give me some relief 7 and hope if this was my Ag plan that I wanted. I would 8 want more. But I would be getting more than I had when I 9 came in this morning or came in yesterday and that would 10 make me feel good.</p> <p>11 If I was a member of the environmental justice 12 community or the environmental community, I would think, 13 oh, God. Now they've moved further toward Ag and further 14 away from what I wanted. I wanted something that was 15 similar to 2010. And we've made so many changes in the Ag 16 direction before today. Now there's more changes, more 17 significant changes. I would feel frustrated in hearing 18 this option to stay later tonight to potentially adopt the 19 Ag Alternative.</p> <p>20 As an environmental justice or environmental 21 member, I'd feel the opposite of relief and hope. But I 22 am willing personally now to stay until midnight if need 23 be. But I think one option is to approve the motion 24 before us with a friendly amendment that subsequent to 25 that approval, and as soon as we're done approving it,</p> <p style="text-align: right;">Page 133</p>

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<p>1 that we take a shot at staying tonight to address the</p> <p>2 fundamental differences that remain between what we</p> <p>3 approved in the Ag Alternative with the option of a second</p> <p>4 vote later tonight to accept a revised Ag Proposal.</p> <p>5 Yesterday we talked about non-negotiability and</p> <p>6 whether there were any nonnegotiable items. And Sam Farr</p> <p>7 and others seemed to indicate, well, maybe they're not if</p> <p>8 you get down to it. But we left that question unanswered.</p> <p>9 If we can negotiate those fundamental differences</p> <p>10 to our satisfaction -- I don't mind staying later, but I</p> <p>11 really like the idea from an environmental justice and</p> <p>12 environmental perspective to get something done today</p> <p>13 that's been in motion for a long time.</p> <p>14 MS. HUNTER: Can I speak to my own motion?</p> <p>15 MR. DELGADO: That wasn't a friendly amendment.</p> <p>16 MR. YOUNG: I want to know if you were facetious</p> <p>17 with that amendment.</p> <p>18 MR. DELGADO: No, it wasn't facetious.</p> <p>19 MR. YOUNG: Okay.</p> <p>20 Dr. Hunter.</p> <p>21 MS. HUNTER: I will speak to my own motion. I</p> <p>22 will be very brief.</p> <p>23 I am with you on that last element. What I'm</p> <p>24 satisfied in is the way this Order has taken shape at this</p> <p>25 point in time. What satisfies me is that now we'll start</p> <p style="text-align: right;">Page 134</p>	<p>1 environmental side and the E.J. side, I think we're going</p> <p>2 to start to see and develop greater understanding of our</p> <p>3 watersheds in coastal systems that are both contributing</p> <p>4 to marine degradation as well as to the fresh water</p> <p>5 issues.</p> <p>6 So for that reason, I do believe we are ready to</p> <p>7 implement this permit program now. And I don't think that</p> <p>8 it would serve any of us to try to now address this kind</p> <p>9 of parking lot of elements that we know are not being</p> <p>10 accommodated at this point; however, I want to thank</p> <p>11 Mr. Jordan for pointing out -- some important changes have</p> <p>12 occurred. I think Reese Nelson said the same thing, and</p> <p>13 in spirit, of course, Mr. Johnston.</p> <p>14 Some important changes have occurred in a very</p> <p>15 short period of time. And the framework that we have now</p> <p>16 before us allows us to do all of these positive and</p> <p>17 progressive things in the right direction. So I would</p> <p>18 urge my fellow Board members to support the motion and</p> <p>19 that we look forward to -- Mr. Briggs suggested that we</p> <p>20 regularly schedule updates and presentations to the Board</p> <p>21 in a way that Staff could accommodate that mode. Because,</p> <p>22 again, we're working with great limits right now.</p> <p>23 But that we want to shepherd the implementation</p> <p>24 of this. And the Board will have a good and close sense</p> <p>25 of how it's working. And that there will be opportunity</p> <p style="text-align: right;">Page 136</p>
<p>1 to see some groundwater data coming out of the program.</p> <p>2 And that has been my priority all along.</p> <p>3 I also have tried to be, along with the other</p> <p>4 Board members, prior to your all joining us, as responsive</p> <p>5 as we could be to the sensitive issues that emerged from</p> <p>6 the stakeholder process.</p> <p>7 As Chair Young led in his leadership in</p> <p>8 recognizing that the Board needed to be more involved and</p> <p>9 opened up the process to workshops and some other ways in</p> <p>10 which we supported Staff to get things back on track, that</p> <p>11 we've seen this process come an enormous distance back to</p> <p>12 a place where I think we -- at least I believe we all see</p> <p>13 the potential and the openings that have been discussed</p> <p>14 both conceptually. To some degree, there's been more</p> <p>15 specificity that's emerged in that process and then the</p> <p>16 potential involvement of very talented individuals like</p> <p>17 Dr. Marc Los Huertos.</p> <p>18 That all gives us great energy now; whereas, we</p> <p>19 were all weary, I feel like there's some energy back in</p> <p>20 the room. I want to thank Ms. Dunham for her</p> <p>21 extraordinary work in moving the Ag Proposal to a point</p> <p>22 where we could see the connections.</p> <p>23 I hope that's true for all of you who support --</p> <p>24 in support of the Ag Alternative.</p> <p>25 At the same time, I want to say to the</p> <p style="text-align: right;">Page 135</p>	<p>1 for stakeholders to come to us with feedback and where are</p> <p>2 the gaps and where they need some assistance.</p> <p>3 So I fully anticipate that we're going to</p> <p>4 continue in that spirit which started about a year and a</p> <p>5 half ago when the Board became more engaged.</p> <p>6 So that's my final statement.</p> <p>7 MR. YOUNG: Before I call for a vote on</p> <p>8 Dr. Hunter's motion, I just want to say to the Ag</p> <p>9 community and the public that I certainly don't expect to</p> <p>10 see possibly even immediate, you know, water quality</p> <p>11 changes. I don't care if it says five years in there.</p> <p>12 What I'm looking for -- and this is my own</p> <p>13 personal opinion with this and perspective -- is that</p> <p>14 we're seeing a good faith effort to work towards improving</p> <p>15 the water quality degradation. That's what I'm looking</p> <p>16 for.</p> <p>17 I know that this is going to take in some</p> <p>18 regions -- some part of our regions years and years and</p> <p>19 years to get to where we want to be. And I know that</p> <p>20 we're at the point we are because of decades of acceptable</p> <p>21 practices. And these have been culturally acceptable.</p> <p>22 The public has been okay with them. There hasn't been</p> <p>23 scrutiny on them before. And I think we have to recognize</p> <p>24 that to expect a huge, diverse complex entity, if you want</p> <p>25 to call it an entity, is Ag, to be able to change so</p> <p style="text-align: right;">Page 137</p>

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<p>1 quickly, I'm not expecting that in terms of the</p> <p>2 groundwater and surface water improvements. But I am</p> <p>3 looking for the good faith effort to make progress in that</p> <p>4 end.</p> <p>5 Having said that, Mr. Johnston.</p> <p>6 MR. JOHNSTON: Couple of things.</p> <p>7 First of all, the question I posed to Staff</p> <p>8 before the break regarding Paragraph 27, Page 7, the</p> <p>9 coupling between filing a pesticide use permit and being</p> <p>10 required to submit a Notice of Intent.</p> <p>11 Did you guys have a chance to take a look at</p> <p>12 that? If so, what is your recommendation?</p> <p>13 MS. SCHROETER: I think the changes that you</p> <p>14 suggest, I think are fine. I don't have any objection to</p> <p>15 the changes.</p> <p>16 MR. YOUNG: Is that included in your motion,</p> <p>17 Dr. Hunter?</p> <p>18 MS. HUNTER: Yes. I would ask that Staff include</p> <p>19 that in the list of revisions.</p> <p>20 MR. JOHNSTON: Speaking to the motion, were there</p> <p>21 four votes for proceeding to try and see if we can make</p> <p>22 sausage out of the Ag Proposal. I think that would have</p> <p>23 been the appropriate way to proceed. It does not appear</p> <p>24 there are. So I will support Dr. Hunter's motion.</p> <p>25 MR. YOUNG: All those in favor of the motion say</p> <p style="text-align: right;">Page 138</p>	<p>1 already passed the recommendation by Staff.</p> <p>2 MR. JOHNSTON: The motion for reconsideration.</p> <p>3 MR. YOUNG: Okay. Well --</p> <p>4 MR. DELGADO: I don't know if it's a motion for</p> <p>5 reconsideration. It's a motion for a subsequent step to</p> <p>6 the last motion passed.</p> <p>7 MR. BRIGGS: May I speak on that?</p> <p>8 MR. YOUNG: Yes. Go ahead.</p> <p>9 MR. BRIGGS: I really think that what you're</p> <p>10 doing is talking about doing Staff work, not only that, at</p> <p>11 a late hour. And, actually, I think maybe the ball would</p> <p>12 be in the court of Ag to take a look at the cons, see if</p> <p>13 they're interested in talking about those cons.</p> <p>14 And as I said before, what we have adopted now</p> <p>15 allows the flexibility for that proposal to come forward.</p> <p>16 I think it makes a lot more sense for that proposal to be</p> <p>17 developed by the folks on the ground who have proposed</p> <p>18 that in the first place. And if -- you know, if the Order</p> <p>19 being adopted allows for it to come to the Board, if it's</p> <p>20 stymied, in other words, if a proposal comes to me and I</p> <p>21 say, no, it's still not there, you have the option to come</p> <p>22 to the Board, but then it would be a cooked proposal.</p> <p>23 A proposal that is fleshed out, that is not a</p> <p>24 moving cloud, as I said. I think that is appropriate. I</p> <p>25 don't think it makes sense for this Board to not only take</p> <p style="text-align: right;">Page 140</p>
<p>1 aye.</p> <p>2 MR. JORDAN: Aye.</p> <p>3 MS. HUNTER: Aye.</p> <p>4 MS. McCHESNEY: Aye.</p> <p>5 MR. JEFFRIES: Aye.</p> <p>6 MR. JOHNSTON: Aye.</p> <p>7 MR. DELGADO: Aye.</p> <p>8 MR. BRIGGS: Aye.</p> <p>9 MR. YOUNG: Any opposed?</p> <p>10 The motion is carried unanimously.</p> <p>11 Is there another motion being proposed,</p> <p>12 Mr. Delgado?</p> <p>13 MR. DELGADO: Sure. I'll throw it out there.</p> <p>14 MR. YOUNG: You can throw it out there.</p> <p>15 MR. DELGADO: It was my friendly amendment. I'll</p> <p>16 motion that we stay tonight to address the fundamental</p> <p>17 differences that remain between the approved motion that</p> <p>18 we just heard and the most recent version of the Ag</p> <p>19 Proposal that Tess brought to us yesterday with the option</p> <p>20 of taking a second vote later tonight on a revised Ag</p> <p>21 Proposal -- on acceptance of a revised Ag Proposal.</p> <p>22 MR. YOUNG: Do we need a second for that?</p> <p>23 MS. McCHESNEY: No, you're not required to have a</p> <p>24 second.</p> <p>25 MR. YOUNG: The effect of that is what? We've</p> <p style="text-align: right;">Page 139</p>	<p>1 your time -- I appreciate your offer to do that -- but</p> <p>2 basically you would be taking everybody else's time, too,</p> <p>3 after two very long hearing days, and I just don't think</p> <p>4 that is reasonable.</p> <p>5 MR. YOUNG: Also, I think that there are some</p> <p>6 things that aren't reconcilable with the cons.</p> <p>7 MR. BRIGGS: Yes.</p> <p>8 MR. YOUNG: There are some that may be; there are</p> <p>9 some that are not.</p> <p>10 MR. BRIGGS: By the way when I mentioned taking</p> <p>11 everyone's time, I'm willing to stay here myself. I'm</p> <p>12 talking about everyone else here, the folks out there,</p> <p>13 it's not fair to them.</p> <p>14 MR. JORDAN: Mr. Chair.</p> <p>15 MR. YOUNG: Yes.</p> <p>16 MR. JORDAN: I'd also point out that I think</p> <p>17 there's an issue of noticing involved with that motion.</p> <p>18 The action that we just took was noticed, but we certainly</p> <p>19 did not notice that we were going to pass that motion and</p> <p>20 then the work on revising that action. That certainly</p> <p>21 wasn't publically noticed.</p> <p>22 MR. DELGADO: And I'd like to counter it. Within</p> <p>23 the sideboards of what was listed on the agenda, we could</p> <p>24 have ditched that Ag Order and rubber-stamped the</p> <p>25 alternative, the Ag Alternative component. So to consider</p> <p style="text-align: right;">Page 141</p>

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<p>1 modifying the Ag Alternative for approval would be within</p> <p>2 those same sideboards.</p> <p>3 MS. McCHESNEY: I am looking at this. So when</p> <p>4 you adopt -- when you make a motion and you vote on the</p> <p>5 motion, you can make a motion to reconsider at your same</p> <p>6 meeting if the main motion is carried or lost. There was</p> <p>7 a motion. It was carried. You could make a motion to</p> <p>8 reconsider your motion. But to make the motion like you</p> <p>9 did, you know, isn't in the list. You could rescind your</p> <p>10 motion or repeal your motion, whatever you --</p> <p>11 MR. YOUNG: What are you reading from, Frances?</p> <p>12 Roberts?</p> <p>13 MS. McCHESNEY: No. Sturgis rules that apply to</p> <p>14 your proceedings.</p> <p>15 MR. DELGADO: I'd like to ask the Chair -- you</p> <p>16 just mentioned that you thought there might be some</p> <p>17 irreconcilable differences between the Ag Alternative and</p> <p>18 what we approved just a few minutes ago. I thought -- I</p> <p>19 don't know what those are, but they sound like the</p> <p>20 nonnegotiable potential that we heard last night and we</p> <p>21 discussed last night.</p> <p>22 Are there really irreconcilable differences? And</p> <p>23 if there are, I would think it would be a short list. I</p> <p>24 would like to know what that short list was, and then my</p> <p>25 motion was to stay tonight to work on that short list to</p> <p style="text-align: right;">Page 142</p>	<p>1 clear on the positions that are reflected among the</p> <p>2 stakeholders that are involved, that have been involved,</p> <p>3 that have engaged in this process.</p> <p>4 I want to see that discussion take place over</p> <p>5 time in a thoughtful and productive way. I don't see that</p> <p>6 occurring in the course of the next few hours.</p> <p>7 I would urge you to reconsider.</p> <p>8 MR. YOUNG: Mr. Johnston.</p> <p>9 MR. JOHNSTON: I do not believe that it would be</p> <p>10 appropriate tonight for us engage in a discussion with</p> <p>11 agricultural stakeholders about whether they're willing to</p> <p>12 modify their Proposal. We have closed public comment.</p> <p>13 And we're at the point that it's -- we can ask questions</p> <p>14 of Staff, or whatever. We're at the point where it's us,</p> <p>15 the Board, figuring out what we're going to do. And --</p> <p>16 MS. McCHESNEY: Right.</p> <p>17 MR. YOUNG: Yeah.</p> <p>18 MR. JOHNSTON: Let me just finish, Counselor.</p> <p>19 I think that if we were to pass a motion to</p> <p>20 reconsider, really our only option would be, can we now</p> <p>21 sufficiently amend what was offered in order to make it</p> <p>22 satisfy our policy and legal concerns. I think it would</p> <p>23 be patently unfair to all of the stakeholders for us to</p> <p>24 start discussion with one group of stakeholders hoping --</p> <p>25 that's not practical.</p> <p style="text-align: right;">Page 144</p>
<p>1 see if Ag was willing to change their alternative so that</p> <p>2 those irreconcilable differences were resolved.</p> <p>3 MR. YOUNG: Dr. Hunter.</p> <p>4 MS. HUNTER: Okay. I'm with you on that, the</p> <p>5 idea that we need to explore and really understand where</p> <p>6 those irreconcilable differences fall. In order to have</p> <p>7 that discussion, however, we need stakeholder input, and</p> <p>8 we need to have a thoughtful process. And I think the</p> <p>9 review that created that set of pros and cons was the</p> <p>10 result of Mr. Johnston's request to the Staff. And I</p> <p>11 think that satisfied his request. But I don't believe</p> <p>12 that that set of points was intended to drive the changes</p> <p>13 or the building out, if you will, the filling in of the</p> <p>14 details of the permit that is to be implemented.</p> <p>15 So I would hesitate to take that summary which</p> <p>16 was created for a different purpose and use it now to</p> <p>17 drive a new discussion, or at least the next generation of</p> <p>18 this discussion, and expect that both the regulated</p> <p>19 community and interested stakeholders are going to be able</p> <p>20 to participate in a discussion at this point in the</p> <p>21 evening really fully prepared. So what would we</p> <p>22 accomplish?</p> <p>23 I think we'd hear a lot of the ideas that have</p> <p>24 already been stated over the last three years. We've been</p> <p>25 hearing these things evolve forward, and I think we're</p> <p style="text-align: right;">Page 143</p>	<p>1 MR. YOUNG: Right.</p> <p>2 MS. McCHESNEY: What I was just going to say is</p> <p>3 that it would be hard for me to give you advise given that</p> <p>4 we got the Proposal yesterday, and I would rather be able</p> <p>5 to sit down with Ms. Dunham and others. If you want to</p> <p>6 schedule that for some other time, to have a discussion,</p> <p>7 then you can do that. It's not noticed to have that</p> <p>8 discussion with stakeholders participating so they're not</p> <p>9 all here.</p> <p>10 MR. YOUNG: Right.</p> <p>11 MS. McCHESNEY: So, anyway.</p> <p>12 MR. DELGADO: I appreciate that, what you just</p> <p>13 said, Frances.</p> <p>14 I'll withdraw my motion. What I wouldn't want is</p> <p>15 to leave tonight and not start implementing what's been</p> <p>16 approved because there might be something else coming down</p> <p>17 the pipes. Everyone just remains in limbo.</p> <p>18 I would hope that if we stay later tonight, we</p> <p>19 would either learn more that is helpful to everybody or we</p> <p>20 would come up with a revised product that we are even</p> <p>21 happier with. I do understand that that's highly</p> <p>22 unlikely, but I just thought the time spent trying would</p> <p>23 be of benefit.</p> <p>24 MR. YOUNG: Okay. So you're withdrawing your</p> <p>25 motion?</p> <p style="text-align: right;">Page 145</p>

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<div>1 MR. DELGADO: Yes. 2 MR. YOUNG: All right. 3 I think that concludes this agenda time. 4 Thank you very much. 5 We are off the record. 6 (Proceedings were concluded at 6:09 p.m.) 7 8 9 --o0o-- 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>	
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<div>1 DECLARATION UNDER PENALTY OF PERJURY 2 3 4 5 I declare under penalty of perjury under the laws 6 of the State of California that the foregoing is true and 7 correct and that this declaration was executed on the 29th 8 day of March, 2012. 9 10 11 12 13 _____ 14 DEBORAH L. HOLDEN, CSR No. 8885 15 16 17 18 19 20 21 22 23 24 25</div>	
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